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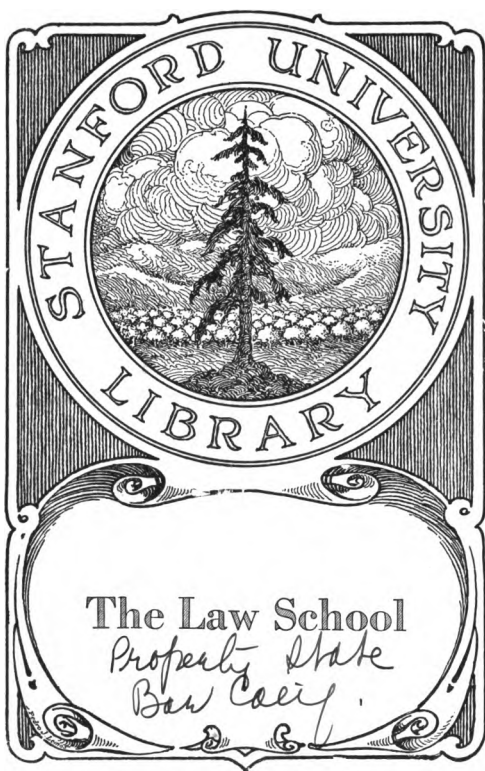
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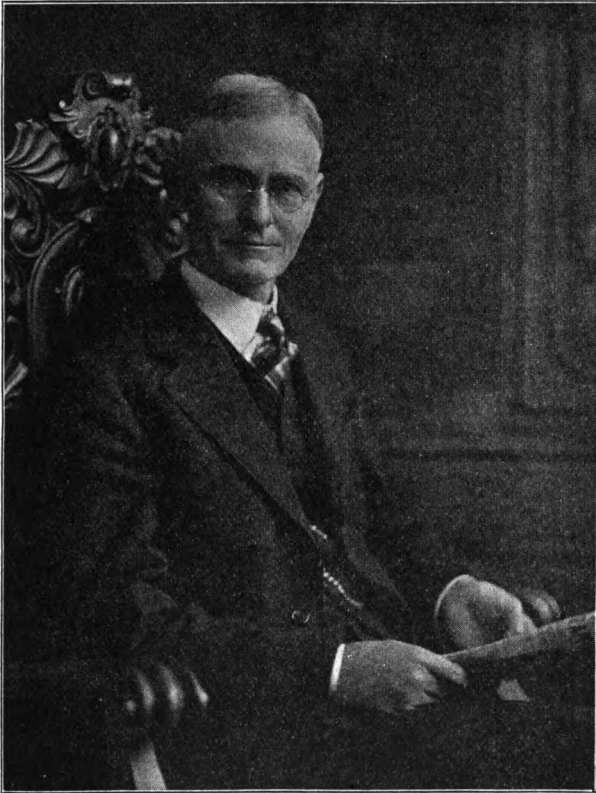












**CECIL H. SMITH**



# Texas Bar Association

Proceedings of the Thirty-seventh  
Annual Session held at Wichita  
Falls, July 3, 4 and 5, 1918, and  
Constitution and By-Laws of the  
Association, List of Members,  
Officers and Committees.

1918

Reported by

J. A. LORD, Houston, Texas

These Proceedings are published by authority and  
distributed to members of the Association.

—F. T. CONNERLY, Secretary.



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# Texas Bar Association

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Henry G. Evans, Treasurer.....	Bonham, Texas
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Jed C. Adams .....	Dallas, Texas
E. B. Pickett, Jr. ....	Liberty, Texas

# Proceedings of the Thirty-seventh Annual Session Texas Bar Association

Wichita Falls, Texas

July 3, 4, 5, 1918

MORNING SESSION—JULY 3, 1918.

The President called the convention to order.

THE PRESIDENT: Members of the Texas Bar Association. For the first time in its history the Texas Bar Association meets in what used to be put down in our old geographies—geographies—that old gentlemen like Mr. Smith and myself and a few others remember—as the Great American Desert, the Staked Plains. Those days have passed. Into this magnificent country have come with the folks—because where the folks are there also the lawyer goes—a magnificent bunch of lawyers. Those lawyers did not show the proper disposition to come to the Bar Association, so the Bar Association has come to them, and we expect during this session to bring them largely into the true fold. A gentleman by the name of Britain has assured us that if we came to Wichita Falls we would find a welcome. I know this gentleman, Britain, and I can vouch for him, because he is my protégé. He is bound to be a good lawyer and a high-class man, because he abided in the office with me for several years. Mr. Britain will tell us whether or not we are welcome here. (Applause.)

## ADDRESS OF WELCOME.

BY HON. A. H. BRITAIN, WICHITA FALLS, TEXAS.

MR. PRESIDENT, GENTLEMEN OF THE TEXAS BAR ASSOCIATION, MRS. SPOONTS: You know the executive committee of the Texas Bar Association for the past several years has been carrying on a persistent flirtation with us relative to holding a meeting in this city. Heretofore, however, it has only turned out to be a light summer flirtation. We are glad on this occasion that the flirtation has borne fruit, and that you are here.

There was a time, had you come to us, that we might have offered you some varieties of entertainment that we will be denied on this occasion. There was a time, had you come to us, that undoubtedly your attendance would have been augmented by the presence of those who, if for no other purpose, would have delighted in placing their feet upon the burnished rail, and have leant heavily upon the mahogany, and, perchance, might have quaffed some of the beverages that refresh. I am told by some of the gentlemen here that some of our loyal members are not here on that account. My friends, the fact that we are denied the pleasure of their presence on this occasion is through no fault of ours. On April 15th of this year, whereas we had always been taught that we were in the north temperate zone, we awoke to the realization of the fact that we were not in the north temperate zone, but we were in the ten mile zone. (Laughter.) Since then our personal liberties have been still further abridged. I want to say to you, however, that our prohibition brethren among the local bar—and I might add that all of us are now prohibitionists—have been reading so much in the press about “preparedness” that they took it that “preparedness” meant for the drouth, and you may approach any member of the local bar with impunity. (Laughter.) In fact, I felt on this occasion, with all the pledges going forward on liberty loans and on Red Cross and war savings stamps, that the local bar should meet and should decide what was the quota of each member, and that each member should thereupon go over the top. (Laughter.) Be that as it may, I want to say to you that the conditions which now confront us have had a wonderful effect upon our prohibition brethren—among which we

all are now—that whereas heretofore they have been talking against the fact of such a thing as local self-government and personal liberty, they have completely changed about, and every one of them now is very much in favor of personal liberty. (Laughter.)

My friends, on this occasion we realize the fact that there come to the Texas Bar Association meeting all kinds and classes of lawyers. We are told that true hospitality consists in making one feel at ease and at home. We realize the fact that there come to us many great constitutional lawyers, many railroad and anti-railroad lawyers, many land lawyers, and from all the various avenues of jurisprudence we will have representatives here. I want to say that whatever the class you belong to, you will be perfectly at ease among the members of the local bar. If you are a constitutional lawyer, you may approach any member of the local bar, with impunity, and you will not be embarrassed, because we are all constitutional lawyers—that is, in accordance with the definition of Judge Carrigan of the local bar. Judge Carrigan says that a constitutional lawyer is one who, if turned loose in a law office, could not find the constitution in three weeks, and we are all constitutional lawyers. (Laughter.) If you are a railroad lawyer, you will find those here who have been harpooned. (Laughter.) If you are an anti-railroad lawyer, you will find those who have been doing the harpooning. (Laughter.) A few years ago I remember they were holding a meeting at Fort Worth, when the lawyers nominated the members of the Court of Civil Appeals, and they were holding a convention down there, and in a burst of eloquence one member of the bar away in the back end of the house exclaimed: “Ain’t we all lawyers?” and some fellow over at one side said: “Yes, but not to hurt.” (Laughter.) So, if, perchance, there are lawyers who come here to this Texas Bar Association meeting, but who are not lawyers to hurt, you can talk to me and the other members of the arrangement and entertainment committee, and never be embarrassed. (Laughter.)

You know it is a great pleasure to welcome to this convention all of the members of the Supreme Court, all of whom will be here this afternoon. I am glad they have caught up with their work and will be able to be present on this occasion. (Laughter and applause.)



My friends, it is a pleasure to me always to see lawyers. I know this is the only opportunity I will have to say anything to the lawyers here, because they are all very reticent, and I expect to do the listening all the rest of the time you are here. But it is a great pleasure to me to welcome to the Panhandle the Texas Bar Association, members of a profession that has stood foremost from the beginning of the world in the things that are really for the best interests of the commonwealth. There is a bond of sympathy that we all recognize between the lawyers. Nearly all of them have passed through the starvation period, and a great many of us have not escaped from that period yet. It is a great pleasure to me to welcome you to this city on this occasion. It is a great pleasure to me to welcome your President, whom I have had the pleasure of being with in his office for several years. It is a great pleasure to me to welcome your executive committee and the members from the various parts of Texas. You are welcome to this city, and we want to make your stay as pleasant and just as profitable as it is possible to do. We have arranged a program, which will be announced from time to time, which we trust will be of some interest to you. If there is anything that we fail to do, call it to our attention, make a motion for a new trial, as the case may be, and the motion will be immediately granted, and we will start again. I am glad that you are here. (Applause.)

THE PRESIDENT: I do not think anything could have been said to make the lawyers who will gather here from out of this county feel more at home in Wichita Falls than the speaker's characterization of the lawyers constituting the entertainment committee. His classification of lawyers reminds me of a story of old Major Buck Walton. They say a farmer drifted into his office one day, sat down and wiggled around on the chair for quite a while, and said, finally: "Major, I was looking for a lawyer." The firm then was Walton, Green & Hill. The major said: "You have come to the right place. If you are out of trouble, and want to stay out, you had better go in there and talk to Green. If you are in trouble, and want to get out, you had better talk to me. And if you are out of trouble and want to get in, you had better go in and talk to Hill." (Laughter.)

There is some rivalry between small cities like Dallas and San Antonio and Houston as to whether they or Fort Worth is the first city in the state. As to who shall hold second place among the cities of the state there has also been a keen rivalry between the thriving city that is now our host and the city on the banks of the Concho. Mr. Barwise being absent and not being able to reach here to respond to the address of welcome, Mr. W. A. Wright has asked that he be allowed to respond (laughter), to keep the balance of power. Mr. Wright is all right, except, as he told us at the last meeting of the Bar Association, when he gets to thinking about the war and our failure to get ready in time, he gets so damned mad he can't talk. (Laughter.) But as we are a little better prepared now, I am sure he will feel at ease and be able to talk. Mr. Wright will respond to the address of welcome. (Applause.)

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#### RESPONSE TO ADDRESS OF WELCOME.

BY MR. W. A. WRIGHT, SAN ANGELO, TEXAS.

MR. PRESIDENT AND GENTLEMEN OF THE BAR ASSOCIATION, AND MRS. SPOONTS, YOU ARE INCLUDED IN THE BAR ASSOCIATION: I think it unfair. I have been drafted on a moment's notice by the President and the executive committee to respond to the address of welcome, without a moment of preparation, and I feel that the Association is going to lose the very brilliant address that I might have made had I had proper time to prepare. (Laughter.)

The Lord has been good to this Bar Association at this time, in the cool and balmy weather that He has sent to Wichita Falls. Time was, before the executive committee chose the next place for the meeting of the Bar Association—each member of which committee wants to be president of this Association, and thinks now is the time that he ought to be—that when we got a meeting of the Association we had to go before the body of the Association and ask their vote for the privilege of entertainment. At such a time San Angelo sent me down to Austin and said: "You go down to Austin and bring that Bar Association here for its next meeting," and I went. Austin was mighty hot then

—it was in July—and I concluded the way I could get them, and I told them of that city by the Concho, nineteen hundred feet above sea level, where they would sleep under four or five blankets every night, where the breezes were always cool, and I got the Association. But the next year, when it met, and I was chosen to welcome the Association, one of those very occasional drouths that sometimes happen in the west had spread its blighting influence over the fair city of San Angelo, and for three months before that time not a cloud even as big as a man's hand had obscured the sun from that fair little city. As I started in my address, the members there assembled—and there were some two hundred of them—began telling me that my probata did not correspond with my allegata. Great gobs of perspiration were pouring in rivulets from the foreheads of the members there assembled, and they accused me of making the statement to them of the kind of blankets they would have to sleep under. I did not remember the statement, but they finally made me mad—I do get mad sometimes—and I told them that was not the usual climate of San Angelo, that it was sent as a special dispensation of providence, as it were, for a sort of an acclimatization of the hereafter of the lawyer. (Laughter.) After the banquet the only lawyer there—that was myself (laughter)—who knew whether it was hot or not, or who cared whether it was hot or not, was myself. (Laughter.) Things were different in those days.

Mr. Britain, all of those kinds of lawyers that you spoke about are either here or are going to be here, to partake of the broad and generous hospitality of Wichita Falls. The constitutional lawyer we always have with us. The anti-railroad lawyer has taken the time from his arduous duties, without fear that while he is gone a railroad may damage somebody, and has hied himself to Wichita Falls. The railroad lawyer has persuaded his court to postpone his case for a few days—he already has a motion for a continuance prepared in his pocket—that he may attend this meeting. A man has absolutely had the temerity to leave his home without fear that some gentleman may be unlawfully charged with crime while he is gone, and the other man get his fee. (Laughter.) Even the gentleman who, for a proper consideration, say for a third to a half, is willing to show that some rich testator was as crazy as a

March here in the making of a propounded will, will be with you, too. (Laughter.) In fact, the bar of Texas, of all kinds and of all characters, is glad to be here. Why, even the gentleman who is willing, solely at the instigation of his friends, to accept some office of dignity and honor—and, of course, emolument—and to sacrifice himself to the good of his country—he is here with us, too. All of us have heard of the glories of this fair little city, and most of us—I am not talking about myself now—whose large and lucrative practice keeps us confined to our office, have never had the pleasure of seeing the glories of Wichita Falls before. Personally, I have. I travel on a free pass. (Laughter.) But I assure the gentlemen of the local bar that this Bar Association appreciates this city's generous and courteous welcome, and that we will be glad, when we go home, that we have been here and enjoyed your hospitality. (Applause.)

THE PRESIDENT: I myself was at the San Angelo banquet the gentleman refers to, and there are others within the sound of my voice who were there, and I know that I speak for all of them when I say that we are glad that Mr. Wright has addressed us today. He may have been one lawyer there who knew, but there was no evidence of it (laughter), and nobody else knew that he knew. (Laughter.)

Gentlemen, I now declare the Texas Bar Association open for the regular order of business. Mr. Chairman of the Board of Directors, I believe the next business in order is the nomination and election of members.

MR. ESTES: It is in the nature of a report from the Board of Directors.

MR. ESTES: I move that the gentlemen named be elected to membership in the Association. (See proceedings of July 5.)

The motion was seconded and unanimously adopted.

MR. ESTES: In view of what Mr. Britain has said respecting the arrival this afternoon of the members of the Supreme Court, as well as the further fact that we understand that quite a number of lawyers will arrive on the noon train from Dallas and other places, I think the Association would be glad to have the President's address and further exercises of the Association deferred until three o'clock this afternoon. I move we adjourn

until three o'clock this afternoon, except Mr. Connerly suggests that we hear the report of the Secretary and Treasurer.

THE PRESIDENT: We will then hear the report of the Secretary and Treasurer, and then entertain the motion to adjourn.

The report of the Secretary was read, as follows:

### REPORT OF SECRETARY.

*To the President, Board of Directors and Members of the Texas Bar Association.*

GENTLEMEN: The Secretary begs leave to submit the following report:

At a meeting of the Board of Directors of the Association held in Dallas, on February 9, 1918, a resolution was adopted directing the Secretary to notify and request every member to pay his dues for the current year—without regard to whether or not he might be in arrears for previous years.

In accordance with that resolution, on June 6, 1918, I mailed to every member of the Association a request for the payment of the current year's dues. The only moneys that have come into my hands, as Secretary, since my election to that office, follows:

Total amount collected from members of the Association for dues for 1918, as shown by stubs of receipt books .....	\$532.50
Total amount collected from members of the Association, for dues for previous years, as shown by stubs of receipt books .....	17.50
Total amount collected .....	\$550.00
Less amount paid for postage, as per receipts of postmaster attached .....	50.00
Leaving a balance now in my hands of .....	\$500.00

The proceedings of the Association for 1917 were printed and distributed to the members by the Wilkinson Printing Company of Dallas, by direction and under supervision of President Chas. K. Lee. The Secretary desires to extend his thanks for his assistance in this matter.

The 1917 proceedings show a total membership of 966, but

many members of the Association, at the call of their country, have joined the colors and others are serving the Government in various patriotic capacities. On this account the exact membership at this time cannot be given.

Respectfully submitted,

F. T. CONNERLY, Secretary.

APPROVED: W. L. ESTES, Chairman of the Board of Directors.  
\$500.00

Received of F. T. Connerly, Secretary of the Texas Bar Association, the sum of five hundred dollars, being the amount collected by him since the adjournment of the last meeting of the Association.

H. G. EVANS,

Treasurer Texas Bar Association.

THE PRESIDENT: I understand these collections you report are the collections for this year only?

MR. CONNERLY: Yes, sir; except \$17.50, which members who knew what they owed were generous enough to send in. I have included that in my report.

THE PRESIDENT: I will say for the information of the members of the Association, that inasmuch as there was some uncertainty about exactly how much past dues there were on the part of some members, it was determined to ask the members of the Association for the current year to pay only the current year's dues, and leave the question of back dues open for further adjustment. We are to be congratulated on having Mr. Fred T. Connerly, whom all of us know, as secretary of this Association. Whatever aspirations there may be on the part of members of the Association or members of the Board of Directors to be President, there was none on the part of Mr. Connerly to be Secretary of this Association. Some men are born great, and some have greatness thrust upon them. This particular piece of greatness was thrust upon Mr. Connerly. He was elected quite unawares and in his absence, and after the convention had adjourned he was advised thereof. He suggested mildly and gently—but there was something in his tone that indicated some degree of seriousness—that he did not think it was up to the incoming Secretary to get up the back work, and he



thought he ought to be relieved of it, and being a little afraid to push the discussion, I took upon myself the burden of getting out these Proceedings. I did not know the extent of the burden then, or maybe there would have been some discussion, in spite of the danger. I finally did get them out at a very late hour. You have heard the report of the Secretary. What is the pleasure of the meeting?

On motion of Mr. H. P. Lawther, seconded by Mr. Hiram Glass, the report was unanimously received and adopted.

The report of the Treasurer was read, as follows:

Wichita Falls, Texas, July 3, 1918.

*To the President and Board of Directors of the Texas Bar Association.*

GENTLEMEN: As Treasurer of the Texas Bar Association, I have the honor to report to you as follows, to-wit:

Received of J. W. Kincaid, per Wright Morrow, at Houston, Texas, July 5, 1917, cash and checks.....	\$ 210.07
Received of J. W. Kincaid, July 13, 1917, check.....	913.52
Received of C. K. Lee, President of Association, checks for dues, list of names attached hereto.....	27.50
	<hr/>
	\$1,151.09

Amounts paid out by me as follows, to-wit:

October 10, 1917, paid draft, J. A. Lord, of Houston, Texas .....	\$ 75.00
November 17, 1917, paid Wilkinson Printing Co., Dallas, Texas .....	16.50
February 9, 1918, paid Cummings & Sons, Houston, Texas .....	5.50
	<hr/>
	\$ 97.00

Balance on hand.....	\$1,054.09
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Respectfully submitted,

H. G. EVANS,

Treasurer Texas Bar Association.

Names of parties whose checks for dues were turned over to me by Hon. C. K. Lee, President of Association, viz.:

Jack Beall, \$7.50; Terrell & Terrell, \$7.50; Edward M. Brow-

der, \$2.50; C. H. Umstead, \$2.50; Ralph W. Malone, \$2.50; J. E. Cockrell, \$2.50; Joseph D. Sayers, \$2.50. Total, \$27.50.

MR. CONNERLY: The amount I have on hand will be contained in the Treasurer's report next year.

THE PRESIDENT: What you report as balance and what the Treasurer reports as balance make the total balance that the Association has?

MR. CONNERLY: Yes.

On motion duly seconded the Treasurer's report was unanimously received and adopted.

The motion of Mr. Estes to adjourn until three o'clock p. m. was then seconded and unanimously adopted.

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#### AFTERNOON SESSION—JULY 3, 1918.

The session was called to order by the President.

Mr. Estes, chairman of the Board of Directors, offered the following names for election as members of the Association, and moved that they be elected, which motion was seconded and unanimously adopted. (See proceedings of July 5.)

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#### PRESIDENT'S ANNUAL ADDRESS.

Article 7 of our Constitution provides:

"The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice."

On the 6th day of April, A. D. 1917, Champ Clark, as Speaker of the House of Representatives, Thos. R. Marshall, as Vice President of the United States, and Woodrow Wilson, as President of the United States, signed a brief resolution therefore passed practically unanimously by the House of Representatives and by the Senate of the United States, a resolution filling about a third of a printed page, and reading as follows:

"Whereas the Imperial German Government has committed

repeated acts of war against the Government and the people of the United States of America:

“Therefore be it

“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.”

This brief but far-reaching resolution forecast and has brought about, and will continue to bring not only more vital changes in our every day life, general and special, than we a few months ago conceived as possible, but has led to more rapid changes in the Statutory Law, of such volume and covering such a variety of subjects, that they not only have already been the subject of page after page of discussion in the law journals, but promise to be a fruitful source of discussion for many years to come and to blaze out theories and ideas in Government to meet the rapidly evolving new conditions that the war and its development have brought about and will continue to bring about.

It is out of the question, therefore, in the brief time that I will be justified in holding your attention, to attempt to review in any detail all of this mass of new legislation, State and Federal, and all that will be attempted is a brief reference to phases thereof.

On June 15, 1917, following closely after the declaration of war, the Congress of the United States passed an act generally referred to as the Espionage Bill, by which was defined a number of offenses, the prevention or the adequate punishment of which was made necessary by the state of war, to-wit: such matters as unlawfully and improperly obtaining information respecting the national defense, taking copies of documents, photograph, etc.; aiding others in doing so; transmitting such information to parties not entitled thereto, etc., or communicating information to the enemy; or making false reports or false state-

ments with intent to interfere with the operations of the military or naval forces, etc.; conspiracy to violate any provision of the act; harboring or concealing persons who do violate the act, etc.

This act is only a type of much that has been passed and that will be passed to give the Federal officers warrant to properly punish those who interfere or seek to interfere with the successful prosecution of the war.

It is interesting to consider in this connection the fact, which I understand to be a fact, that the United States District Attorneys and the Attorney General, the marshals and other court officers, found themselves at the beginning of the war seriously handicapped by the fact that provision had not been made in the statutory law to cover acts on the part of individuals or combinations of individuals manifestly designed to cripple and hamper the government in the organization of its military forces and the proper prosecution of the war.

That such offenses had not been theretofore defined by statutes—that the advent of war should have found our governmental legal department without the necessary statutory machinery to enable them to properly aid the execution in its efforts to put the country upon a war footing, is the strongest kind of evidence of the peaceful character of our people and our fortunate national history, and of the fact that up to the time the Huns reached out after universal empire, we, on this side of the Atlantic, were left so secure in our position under the Monroe Doctrine, that we had no occasion to consider and provide against action on the part of citizens or others calculated to interfere with national defense.

Surely we have full reason to hate the Huns who have made this kind of legislation necessary.

Another interesting suggestion in this connection:

Have we gone too far in our general governmental theory that men cannot be punished for violations of law, unless the specific crime or the specific offense is specifically defined and set forth by a definite statutory enactment.

Many years ago—25 or more—in the city of Galveston, some three or four drunken toughs, crazed with whisky to the point of utter recklessness and disregard of all sense of decency, broke into a hearse in a passing funeral on one of the public streets

of the city, and before they could be stopped, had dragged the coffin from the hearse and the corpse from the coffin.

Under our established theory that crimes must be defined specifically and exactly before prosecution will lie, the officers of the law in Galveston found themselves in the very unpleasant predicament that there was no definition of an offense under the Penal Code carrying with it a punishment at all adequate.

In connection with the impeachment of Governor Ferguson, it has been very strongly urged in certain quarters that particular charges could not be sustained as grounds of impeachment because such conduct, however bad, had not been expressly condemned by the Penal Code or other statutory enactment.

And involved in this war, the greatest of all history, our Government with all its power finds its hands tied as against those who would interfere by word or act with the national defense, because disloyal acts of a particular character had not been forecast and provided against by express legislation.

The situation is suggestive and if other matters do not crowd too fast upon us and conservative thinkers have the opportunity to give the subject proper consideration, we may work out some intelligent and safe limitation of the general proposition that offenses must be defined expressly before they can be punished, confining the rule under proper and reasonable safeguards, to acts not necessarily wrongful or a breach of good morals in themselves, but that become so because the interest of the particular community or state forbids their doing, as distinguished from those acts that by their very nature and character are wrong or immoral, manifestly against the interest of the people and the Government or its protection and defense.

Another example of this hurry-up legislation to enable the prosecuting of disloyal acts or utterances, is the act of our State Legislature prescribing a penalty for the use of any disloyal language, or any disloyal conduct, by any person of, or toward the United States of America, during the war with Germany.

This act also illustrates the difficulties met with in the application of the rule that offenses to be punishable must be expressly defined by the statute.

In an evident effort to make the language of the statute broad enough, the legislature has passed a statute that will bring, and

unquestionably has brought many of our most loyal citizens within the statutory definition of felons.

Section 3 of the act declares it a felony, punishable by imprisonment of not less than two years nor more than twenty-five years, in the penitentiary, to "publicly or privately mutilate any flag, standard, color or ensign of the United States, or any of its officers, or of any imitation of either of them." To tear up a circular with the flag of the United States stamped on it, is, under the terms of that act, a felony.

Section 4 of the act provides:

"Any person who, during the existence of the war between the United States and any other nation, or nations, shall knowingly, within this State, display or have in his possession for any purpose whatsoever any flag, standard, color or ensign, or coat of arms of any nation with which the United States is at war, or any imitation thereof, or that of any State, subdivision, city or municipality of any such nation, shall be deemed guilty of a felony, and shall be punished by confinement in the State penitentiary for any period of time not less than two years, nor more than twenty-five years."

Under this act, every citizen who does not want to come within its provisions, should take up all dictionaries, encyclopedias, geographies, reference books, or books of any other kind that may have printed therein any flag, standard, color, or ensign or coat of arms of Germany, Austria or any other country with which the United States may make war.

This broad language was evidently prompted by the necessity of reaching the disloyal, and the difficulty of using more limited language without leaving a loop hole for the guilty to escape.

But the necessity for framing acts of this character leads to a situation only a little less dangerous to the public weal than the prosecution of men for offenses that are not expressly defined—that is, acts of this character that must be couched in language this broad—of necessity bring about a condition where it must be left to the prosecuting officers to say that this particular violation of the act, although coming expressly within its terms, should not be punished, or this particular violator should be immune from prosecution, while the next offender against the letter of the statute ought to be prosecuted and convicted.

The Special Session of the Legislature passing this act last



discussed, was certainly a very remarkable session. In the brief space of thirty days it passed 95 separate acts of general character, 12 resolutions and 32 local or special laws. Its published acts, with no appropriation bill to swell the volume, runs well along toward the size of a regular session of ninety days.

And the legislation was on a number of very important subjects, of vital interest.

Ten separate acts in the nature of war measures—to aid in the prosecution of the war, or to meet conditions arising from it—were passed. Some eight or nine drastic and stringent liquor laws were passed, some of them destined to be short-lived if statutory prohibition is sustained; but all of them manifesting the determination of the law-makers, either to put the liquor traffic entirely out of the State, or else, if it can remain in any shape, to safeguard it just as far as their intelligence could provide a safeguard against its evils.

Along the same line, and bearing the joint complexion of war measures, and anti-vice bills, were passed several acts to limit and check, curb and prevent the dangers of the social evil.

It is hardly rash to say that this particular Legislature passed more laws with the purpose of bettering social conditions than were ever passed in the same period of time in the State before; unless it be, when the Penal Code was enacted; and the time taken for the enactment of the Penal Code, did not, of course, represent even an approximation of the time taken for its preparation.

The measures passed by this special session were very largely, we take it, gotten up on short notice—emergency measures. And their enforcement may suffer in consequence. But considering the circumstances under which they were enacted, their purposes seem to be well defined, and considering the great evils that they seek to curb, it is to be hoped that they will prove thoroughly effective.

In an entirely different field, but in some sense war measures, and reflecting the awakened intelligence and energy of our people, and our appreciation that we cannot afford to move along in these war times in our accustomed slow and leisurely tread, are some seven or eight bills on classification, reclamation and drainage looking to the impounding and preservation of water

for irrigation and like purposes, or to prevent the pollution of streams and water-ways.

These enactments fill up a large part of the acts of the special session, possibly one-third. Many of the acts seem to overlap. It is to be hoped that the legislation is carefully considered and well and intelligently designed to accomplish its purpose. But whether it is or is not, it indicates that our people are awakened to the fact that we live in a dry country, and that water well husbanded and abundant is a matter of first importance to our development, and that the impounding thereof in sufficient quantities to make the wilderness blossom like a rose, is only a matter of preparedness, and to keep the water that we need to make our crops sure, is to guard against the results of drouth.

The special session stamped indelibly on the law books of the State full evidence of its patriotism.

By Chapter 17, page 29, of the Acts of Special Session, it provided for the teaching of patriotism in the public schools in this State, and fixed severe penalties on every official or employe of the schools who failed to perform his duty under the act.

To avoid any possible mistake about their intention, Chapter 38, page 67, covers identically the same subject in identically the same language, except in the second act the word "public" is left out before the word "school" in Section 1, and the word "school" in the second act before the word "trustee" is left out.

As the caption of the act expressly provides that it should only apply to public schools, and as all of the provisions of the act clearly indicate that it is only intended to apply to such schools, and as the Legislature would hardly be considered by the courts to have undertaken to regulate the curriculum of private schools, we conclude that the passage of the second act was not to correct a supposed insufficiency of the first, but to give emphasis by the Legislature to its feeling on the subject.

The emergency clause contains all sufficient reasons for the immediate going into effect as follows:

"The fact that this nation is now at war with a foreign foe, and that the strength of a government of the people, by the people, and for the people must necessarily come of its citizenship, creates an emergency and an imperative public necessity that the

constitutional rule requiring bills to be read on three several days be suspended and that this act shall be in force from and after its passage, and it is so enacted."

Although recognizing the imperative public necessity for the beginning of this character of instruction in the schools at once, it is gratifying to know that the response of the citizenship of this country to the calls of this Government in the time of war demonstrates that patriotism has found lodgment in the minds and hearts of the people, even though the teaching thereof has only at this late date found its way to the public schools. If it had not, I am afraid the instruction, in spite of the emergency clause, would have come too late.

Still the act is an eminently proper one.

The American people are unquestionably lacking in respect for the Government, governmental functions, and the manifestations of Government.

A few years ago a Canadian cab driver led a party of us through the Assembly Hall in the Parliament House at Toronto, Canada—the Parliament House being much the same character of building as our Texas capitol, about the same size, but kept up and kept in shape very much better than our State capitol. As we entered the Assembly Hall of the Parliament House, this cab driver instinctively lifted his hat and remained uncovered during the whole time he was in the Assembly Hall, although outside of our little party just passing through, there was not a human being in the hall.

This character of respect the American youth has never learned. It has never been inculcated.

In Fort Worth a few weeks ago in gun practice at Camp Bowie a great gun exploded, killing nine or ten men.

The following day a company of soldiers preceded down Main Street of Fort Worth in a solemn funeral march, two or three hearses carrying bodies of these young men who had died for their country.

Two gentlemen turning into the street felt an instinctive impulse to lift their hats and stood uncovered as the funeral procession passed.

One of the gentlemen touched two young Americans standing close by and quietly suggested that they uncover, and they turned upon him a look clearly betokening evidence of their

resentment at his impertinence. They kept their hats on, as practically all of the crowd did up and down the streets, gazing at the passing funeral cortege with the same indifference and idle curiosity that they would have bestowed upon a circus parade or a procession advertising a minstrel show.

There is no possible question that it is time that reverence for government and government officials and government institutions was being inculcated into American youths and into our American people. We need it.

Chapter 31, page 55, of the Acts of Special Session on the transportation of intoxicating liquor within the State is an interesting piece of legislation.

It is interesting in the stringent character of its terms and provisions, especially in that it makes it unlawful for any person to keep or have for personal use or otherwise or to permit another "to have, keep, or use intoxicating liquors in any restaurant, store, office building, club, place where soft drinks are sold, fruit stand, news stand, room, or place where bowling alleys, billiards or pool tables are maintained, livery stables, automobile garage, court house, public building, park, road, street, alley, or any other public place within any territory or subdivision of this State in which the sale of intoxicating liquor has been prohibited under the Constitution and laws of this State. Provided, however, that nothing contained in this section shall prevent one in his home from having intoxicating liquors when such having is in no way a shift, scheme or device to evade the provisions of this act; but the word 'home,' as used herein, shall not be construed to be one's club, place of common resort, or room of a transient guest in a hotel or boarding house."

Under the provisions of this act our deepest sympathy goes out to the dear old transient fellow who has labored for so many years under the impression that a little vial of the liquor that is red is an essential part of the packing of every gentleman's valise or suitcase.

Some other classes of citizens besides the transients may, when they read the provisions of this act, have a very decided impression and feeling that their cherished personal liberty in the matter of things to drink, and the receiving and keeping thereof, has been very much limited.

But this act is interesting from another standpoint. It is interesting as a study in captions and the framing thereof, under our Constitution.

If the caption of this act is not a little longer than the act itself, it certainly is only a very little shorter.

By rough count, we find approximately 102 lines of printed matter in the caption and 107 lines in the act itself, and we think that the words in the caption run a little more to the line than they do in the act. So we think possibly the caption has more words in it than the act.

This reminds us of the story going the rounds—it may have a foundation in fact, or it may not—as to a conversation between Judge Etheridge, of Dallas, and the editor of the West Reporter System. Judge Etheridge visited the plant and met the editor in chief, and he asked Judge Etheridge what he thought of his revised and approved system of digesting, to which Judge Etheridge is said to have replied: “Well, I think this about it: I used to read the syllabus of a case to find out what was in the opinion; I now read the opinion to find out what is in the syllabus.”

However, in view of the ruling of the Attorney General as to the necessity of women registering under the Woman's Suffrage Act, the safety first rule would seem to be the one to apply in all cases of caption, and that the caption should be embraced in the act and the act in the caption.

By Chapter 52, Title 15, of the Penal Code, as amended by the addition of Article 1055 thereto, on the subject of encouraging or contributing to the delinquency of a minor, and a heavy punishment is fixed by the act against any person who shall in any manner encourage or contribute to the delinquency of any minor under the age of seventeen years. The act declares that by delinquency is meant “the using of tobacco in any form, the drinking of intoxicating liquor, the taking of such minor into a house or place where prostitutes or lewd women are permitted to resort or reside, or knowingly permitting such minor to remain in any house or at any such place, the forming of the habit of using any harmful or injurious drug, or any act which tends to debase or injure the morals, health or welfare of such minor.”

It is quite interesting to note that the lawmakers put in the

same category, the using of tobacco in any form, the drinking of intoxicating liquors, or the visiting of houses of ill fame.

Tobacco users of all ages, classes and conditions, without reference to previous conditions of servitude, will take notice; chewers and smokers of the weed take counsel with yourselves: Are you in any manner causing, encouraging and contributing to a minor under the age of seventeen years acquiring the smoke habit or the chew habit; if so, you are just as deep-dyed a villain as the man who gives the young man under seventeen a drink or takes him to an immoral house.

Chapter 15, of the Acts of the Special Session of the State Legislature, page 26, provides that the State shall pay for interpreters in the courts at the rate of \$3.50 per day, and that in civil cases where an interpreter is to be used, a fee of \$3.00 per case shall be taxed as costs.

There is serious doubt, we think, of the propriety of making the State pay in civil cases for special services of this character, made necessary because the parties have witnesses who do not speak English.

As the cases over the State where interpreters might be used do not arise often, this act may not add greatly to the expense of litigation, to the State, but in that section of the State where there is a large population who have come out of the land of God and liberty, the use of an interpreter may be quite frequent, and this provision may be very necessary to save the expense to the parties, and especially lawyers, interested in the character of cases that are prosecuted on contingent fees.

Chapter 41, page 70, of the Acts of the Special Session, provides for the increase of the salaries of county superintendents of public instruction. The emergency clause reciting "that increased cost of living has rendered the present salary of the county superintendents in Texas entirely insufficient to their needs, and that the meagerness of said salaries is inflicting a hardship upon such county superintendents and their families, creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and that this act shall be in force from and after its passage, and it is so enacted." Considering that the salaries of county superintendents as theretofore fixed were

less than those fixed by this act, no one will challenge the statements made in this emergency clause.

Salaries, by the act, are fixed on a sliding scale from \$1000.00 per year to \$2100.00 per year. In every county that has a scholastic population of 2000 or less than 3000 the salary is put at \$1200.00; where it is 3000 or not over 4000 it is fixed at \$1400.00, and thereafter \$100.00 a year is added for every additional 1000 students; and in counties with over 10,000 scholastic population the county superintendent in charge of public instruction, outside of large cities, shall receive the magnificent sum of \$2100.00. Almost as much as a first class bookkeeper, traveling salesman, mechanic, carpenter, brickmason, conductor, engineer and many firemen and brakemen make.

While this comparison is not meant to question the propriety of the earnings of the other classes given, it is intended to emphasize the proposition that the class of men that ought to be secured and had for county superintendents are entitled to more compensation, and that the small salaries are likely to prevent and do prevent the county from getting the best men and men that might otherwise be available for these important positions.

I know one very efficient county superintendent in one of our largest counties, who has recently withdrawn from the race for re-election because he has been offered, by a book concern, a salary of \$1500.00 more than his compensation under the present law would be, and over twice as much as it was under the old law.

On page 132 of the acts is found an act designed to better the conditions of working women in factories, laundries and like places. Its manifest purpose will meet with the approval of all right thinking people.

It is very general and indefinite in the definition of the duties of the employer and those acting for him, and again suggests the difficulty of codifying all criminal offenses, and suggests a possibility that the beneficent purposes of the act may fall short of accomplishment, because of the difficulty of setting forth in general statutes, exactly what shall be done under particular conditions.

And this act, and like acts—and many of them are found in the statute books—together with the mass of local legislation that occupies the time of each Legislature—fixing and changing

terms of court, creating independent school districts, extending or limiting the powers of the county courts, etc.—brings home strongly to our minds the question as to whether we do not charge the Legislature with too much detail, and force them to occupy their time with matters that might be better and more satisfactorily handled by well-organized commissions.

As illustrative of this suggestion, Chapter 63, an act covering about six pages, undertakes to define and fix standard grades for fruits and vegetables, fixing five grades for Bermuda onions, two for cabbage, two for string beans, four or five for pears, three for Irish potatoes, and containing a list that either occupied a large part of the attention of the Legislature, or else the bill was passed without proper consideration and simply reflects the views of a few interested parties, who managed to get the bill hurried through.

But the law passes, and it is the law governing the subject until the Legislature meets again, and not only until it meets again, but until some one sufficiently interested and has sufficient influence to manage to railroad a similar bill through the Legislature, making changes in its provisions.

Similarly, by page 72, this very much crowded special session does some more enacting on the interesting subject of doves, and the killing thereof. It may be, however, subjects like this dove legislation are important factors in the proper control and direction of the Legislature. I have heard it said that the opposition of a certain representative, who had the deciding vote on a very important measure, a few years ago, affecting some of the most important State institutions, a measure then most actively under discussion in the State, was induced to withdraw his opposition and vote for the bill in consideration of the leading proponent of the bill agreeing to see to it that a certain game law that the legislator was interested in, was assured of passage.

On page 45 of the acts, and again on page 196, are found bills giving power to the Railroad Commission, with the consent of certain local authorities, to authorize or require the relocation of railroad tracks, under particular conditions.

While one of these bills was pending, there was serious talk about the corridors of the capitol, as to whether the provisions of these acts were not dangerous to individual rights, in that



they might authorize removal and relocation of tracks serving and giving value to particular property, and industries where the change of location would result in the destruction of the value of property, and this under conditions that would take the property out of the constitutional protection that no man's property should be taken or applied to public uses without full compensation. It might occur to the unwise also that the bills might work some hardship on the railroads, but of course this is a matter of no consequence.

On page 32 of the acts, is an act providing for the issuance of licenses to non-resident lawyers, without examination, under certain conditions; it being made a condition precedent to such admission, however, that the State from which the applicant comes, will admit lawyers to practice in its courts under substantially the same conditions.

Exactly why the State Legislature should concern itself in passing upon the qualifications of a man to practice law in this State, with whether a Texas lawyer would, under like conditions, be permitted to practice law in the foreign State, is not altogether clear.

The material question would seem to be what were the proper safeguards to the practice of the profession in this State, and that this solution was not aided by a consideration of whether other States were liberal or illiberal in admitting our lawyers to practice there.

It was said that old Peter the Great, when in England, learning to build ships, expressed more surprise at the number of lawyers he found about the inns and court, than at anything else he saw. "Why," said he, "I have only two lawyers in my whole kingdom, and I'm going to hang one of them when I go back." And there are some narrow souls in this great State of ours who think there are too many lawyers, and some lawyers who think there are too many of a certain class.

But lest I get on dangerous ground, I will rest this subject here, and refer further discussion to the chairman of the Board of Directors, Mr. Estes, who makes his abiding place in Texarkana.

Chapter 29 is an act fixing something like a reasonable compensation, under our advanced development, for county commissioners, and exploding, as it properly should be exploded,

the old theory that public officers should work for the government for a minimum of compensation or no pay at all.

The Legislature, in preceding years, had undertaken to help this situation, but had done so in an unauthorized way, with a result that looked quite serious to many very capable and good men who had drawn salaries from the counties under the former acts, believing that they were entitled to do so, and who were in danger of being made to refund, when they were not in financial condition to do so. The purpose of this act was therefore not only to fix a reasonable compensation for very important public positions, and for very important public services, but to provide relief for these public officials who had been misled into the misuse of public funds.

Chapter 59 seems to have been designed to supply an hiatus in the interchangeable jury law (a law which does not seem to have met with universal approval) in that it permits the parties to agree that the sheriff may summon talesmen.

The act is one that practicing lawyers should take notice of, as it may be of considerable value to them in some particular cases.

Chapter 80 covers the startling enactment that the teaching in our public schools shall be in English—startling because most of the people of the State will certainly be surprised to know that in any part of the State, instruction in the public schools was conducted in any other language.

This bill calls our attention to the fact that we have, unconscious of danger, although it was all around us, permitted a practice to grow up, tending to undermine instead of build up, our institutions.

Chapter 82 undertakes to provide regulations for junk dealers. This act, at the present time, is hardly of interest to lawyers; but after the close of the war, with the changed conditions, and the revolutionary ideas that it may bring, it at least may appeal more strongly to lawyers, as they may find their accumulation of law books and supposed legal lore is largely junk.

Chapter 83 makes an addition to the proceedings in forcible entry and detainer cases, that certainly has long been needed. It provides, in substance, for a method of obtaining possession of the property in controversy, very similar to that provided by the writ of sequestration in the district courts.

Chapter 88 is designed to prevent the abandonment of the operation of part of their roads by railroads. And in line with two other acts above referred to, seems to contemplate that the question of abandonment by the railroad of any part of its tracks should be left to the Railroad Commission.

Chapter 90 is an act providing for second primaries, and designed to prevent the nomination of minority candidates. Being an election measure, and an election now coming on, the act has probably received more attention than any passed by the special session, except the woman suffrage act and the whiskey and liquor regulation laws.

An act of vital interest to all lawyers in active practice, and to all litigants, is Chapter 81, providing a Commission of Appeals of six judges, with a tenure of office of practically two years—the commission itself being only created for a short period.

Briefly, the act puts the judges to be appointed on the same basis as to compensation and qualifications as judges of the Supreme Court; and the Legislature manifestly contemplated, and it is devoutly hoped that the Governor will see to it, that just as far as is practicable, for so short a term of office, the positions shall be filled by men of the character that we have had on the Supreme Bench.

The act in substance, provides for two classes of cases to be considered by the commission.

One, of cases referred to the commission by consent, in which their decision shall be final as to the cause, but shall not be published in the official reports. It seems the Supreme Court is not expected to make any order or take any action in such cases, except entering of such orders as may be necessary to give effect to the decision of this commission.

The second class of cases, are cases that the Supreme Court itself, and for its relief, considers should be referred to the commission. The decision reached by the commission in this class of cases, the law provides, shall be approved by the Supreme Court, and when so approved shall be published as the opinions of that court, as in other cases.

I have said that this Commission of Appeals is a matter in which the lawyers of the State are unquestionably very deeply interested; but I think the statement that more than one-

half of the bar are applicants for positions on the commission, is a mistake.

On the 21st of March, 1918, the State-wide Prohibition bill was approved, and thus, the goal of all good prohibitionists, subject to the action of the courts on the constitutionality of the act, was attained.

Generally, the provisions of this act and its far-reaching character, are familiar to all.

Its constitutionality appears to have already been called into question by application for a writ of habeas corpus to the Court of Criminal Appeals; and discussion before this body, at this time, of that question, would be out of place, even though the weather conditions did not absolutely forbid the entering into a debate calculated to develop heat on the part of the participants and the hearers, even though the bill does cut off some sources of heat acceleration.

Looking over the enactments of our State Legislature, with the view to the preparation of this paper, I have discovered that much *unique* (uniky), to use the expression of an old friend of mine, and much interesting matter hidden away in the emergency clauses to some of the acts.

For illustration, the emergency clause of this State-wide Prohibition act contains the following:

\* \* \* "and the fact that the confederated intelligence of mankind has come to realize that the sale and use of intoxicating liquors is a profligate waste of the material resources of the country and a universal impairment of its man-power, together with the fact that experience has unquestionably developed the truth that the liquor traffic knows no master or law and is beyond the pale of all adequate regulation, create an emergency and an imperative public necessity, compelling the suspension of the constitutional rule requiring bills to be read on three several days and that this act take immediate effect, and such rule is hereby suspended and it is hereby declared that this act shall take effect immediately upon its passage."

We can hardly resist a deep sigh of pity for those noble "antis on principle," who, by this declaration in the emergency clause, are excluded or expelled from the "confederated intelligence of mankind."

It seems also almost unbelievable, that with this sweeping and

unqualified denunciation of John Barleycorn as a basis for the action that the act should not have been put immediately into effect—that the emergency clause should have failed to pass, and that the act should have gone into effect ninety days after the adjournment of the session.

And the Legislature not only passed the State-wide Prohibition law, but within about six days after it convened, it adopted the amendment to the Constitution of the United States, forbidding the manufacture, sale, or distribution of liquor within, the importation thereof into, or the exportation thereof from, the United States and all territories subject to the jurisdiction thereof, for beverage purposes.

By this action, Texas becomes one of the earlier States to ratify this amendment; and this prompt action by the Legislature thereon, together with the Ten Mile Zone Law and the Statutory Prohibition Act, show that the will of the people now is unqualifiedly for the extermination of liquor traffic—the action by the Legislature being only the reflection of such will.

I have referred above to the acts passed by the State Legislature at the Special Session, in aid of the prosecution of the war, or growing out of war conditions.

The first of these acts provides for the investment of surplus funds of the State in short-time United States certificates offered for sale by the Government.

The next provides for the procuring and selling of seed to farmers too poor and unable to procure it. The emergency clause declares the war and the Government's needs as a reason for the passage of this act.

The act will probably go unchallenged as to its constitutionality, though in peace times the power of the Legislature to so use public funds, or authorize the counties so to do, for such purposes, or the propriety of this character of legislation, might have been seriously questioned.

Other acts provide for the Council of Defense; that certain insurance companies may write marine risks; for the extension of teachers' certificates made necessary by teachers being called to war service; forbidding foreigners to vote in the primaries, an act that it is rather surprising should have been regarded as necessary, as we would hardly have supposed that foreigners would have the right to vote in the primaries.

There was also an act which shows awakening consciousness to the fact that we must practice a virtue heretofore almost unknown to us—thrift, economy; an act looking to the preservation and care of cans and bottles and to prevent their destruction.

#### WOMAN SUFFRAGE.

The piece of legislation enacted by the Special Session, however, that probably took us most by surprise and has aroused most interest, second only to the enactment of the liquor laws, even if it be second to that, is the act giving women the right to vote in the primaries.

It may be, according to the story in Genesis, that woman is responsible for man's fall, but, be the story true or not, developments of the last few years have indicated most positively that she has made up her mind to be sponsor for his redemption.

As she had made things bad, she was going to make things good.

We have not reached the millennium politically and governmentally, and the women concluded some time ago that the men did not properly appreciate how far we were away from the goal, and that something had to be done.

They thereupon made up their minds that they should exercise the right of suffrage.

She may be referred to as the weaker sex, but I will have ample support, I am sure, in the observation that when woman, singly or collectively, makes up her mind that she wants a particular thing, before many moons roll round, she is found in possession thereof.

We have not caught quite our second breath since the suffrage act was passed, but while we are catching it, we are coming very rapidly to realize not only that women have been given the right to vote, but that they are going to vote, and that they are to be reckoned with.

And that they are to be a factor, a large factor, for good or for evil, there is no question.

Further, that they are going to be a factor for good, and most positive and potent good, there is small reason to doubt.

You may not like woman suffrage—but you had just as well reconcile yourself—it is here to stay.

There has been pending (I do not think it has been acted on) before Congress a bill of decided interest to lawyers entitled "To amend the practice and procedure in Federal Courts, and for other purposes," providing as follows:

"That hereafter in any cause pending in any United States court, triable by jury, in which the jury has been impaneled to try the issue of facts, it shall be reversible error for the judge presiding in said court to express his personal opinion as to the credibility of witnesses or the weight of testimony involved in said issue: Provided, that nothing herein contained shall prevent the court directing a verdict when the same may be required or permitted as a matter of law.

"Sec. 2. That the judge of the court on the issue of law involved in said cause shall be required to deliver his charge to the jury after the introduction of testimony and before the argument of counsel on either side, and where requested by either party said charge shall be reduced to writing: Provided, however, that in United States courts sitting in States in which the law permits the trial judge to deliver his charge after argument of counsel, such procedure and practice may be followed by the trial judges in United States courts sitting in such States."

The New Republic, published in New York City, Vol. XIV, No. 178, page 248, under date of March 30, 1918, says of this bill:

"When the world is engaged in a death struggle it is possible to bring about the passage of a law which in less distracting times would be condemned by enlightened opinion. A bill (H. R. 9354) has been introduced in the National House of Representatives to deprive the Federal judges of the power to express any opinion on the evidence in cases tried before them. This power the Federal judges have always had, as have the English judges and the judges of many of the State courts. In some few States, however, chiefly in the South and West, the power has been taken from them. In these States a trial is regarded as a contest between opposing lawyers, and the judge is a mere umpire whose duty it is to see that the rules of the game are followed and the best fighter wins. The more the authority of the judge is reduced, the more the power of the contesting law-

yers is magnified. The result of such a statute as that proposed is to enable that party to win the case who employs the more able or perhaps the more unscrupulous lawyer.

"And yet this bill has been unanimously recommended for passage by the judiciary committee of the House. The recommendation is based upon a single case tried in Missouri ten years ago, in which a judge charged the jury that in his opinion the witnesses for the defendant were not telling the truth, but added that it was the jury's business rather than his own to determine whether the witnesses were telling the truth. The jury convicted the defendants and the judges of the circuit court of appeals were unanimously of the opinion that a verdict of acquittal would have been a travesty on justice. Under the present law the conviction stood. If the bill advocated by law were law, the just verdict would have had to be set aside. Could the committee have selected a case which would furnish a more conclusive argument against the bill recommended by them? Under the present law there is no real danger that the judge will invade the province of the jury. The judge is required to make it perfectly clear to the jurors that the decision rests with them and not with him. A jury is quick to see and resent any attempt at coercion by the judge. But the jurors are entitled to assistance from the only other impartial person in the court room. Chosen at random and unused to the atmosphere of the court room, they require, in a case where the facts are at all complicated, some expert assistance. The question is whether that assistance is to be rendered by the judge or by the lawyers hired by the parties. The proposed bill forces a wrong solution."

This view, although the expression of a layman, is perhaps as strong a statement of one side of the question as to the propriety of a trial judge commenting on the weight of the evidence as can be put.

The Congressional Committee reporting on the bill states the adverse view as follows:

"This section will prevent trial judges in United States courts from invading the province of the jury by expressing personal opinions as to the weight of the testimony or the credibility of witnesses.

"In 'summing up' the trial judge frequently so intermingles



his personal opinion as to the weight and effect of the evidence offered and the credibility of the witnesses with his declarations of law that the jury and sometimes even counsel in the case are unable to distinguish between the declarations of law and the personal opinions of the trial judge as to the merits of the controversy.

“This abuse in some jurisdictions has become so flagrant as to practically destroy the integrity of trial by jury. It not infrequently happens that the trial judge goes to the extent of denouncing, in the presence of the jury, witnesses who may appear in the case and of expressing his opinion that their testimony is false and that the witnesses are guilty of intentional false swearing.

“As an example of this, see *Smith vs. The United States* (157 Fed., pp. 721-732). In this case the trial judge denounced as a liar the only witness whose testimony, if believed, would have made a conviction impossible. The court of appeals in commenting upon this, said:

“In the course of his remarks to the jury the learned trial judge referred to the evidence of one witness who had alone denied categorically and emphatically many facts concerning the treatment of the negroes on the Smith farms which had been affirmed in one way or another by at least 40 witnesses. He told the jury that they knew what they thought, and also what he thought about that evidence, and unhesitatingly said he did not believe it. In that immediate connection he again advised the jury that it was their province, and not his, to determine the credibility of witnesses and the value of their testimony. Notwithstanding his remarks the jury, in our opinion, were left free to give such credence to the evidence in question as in their judgment it merited.

“Comments concerning the value of evidence are not assignable for error when the jury are left at full liberty to determine the issues of fact for themselves. *Freese vs. Kemplay* (55 C. C. A., 258; 118 Fed., 428); *Sebeck vs. Platdeutsche Volksfest Verein* (59 C. C. A., 531; 124 Fed., 11), and cases cited.’

“If the trial judge shall say anywhere during his ‘summing up’ that the jury is at liberty to believe the evidence as given by the witnesses, the injured party is without remedy. If, as the court has said, that the expression of the opinion by the trial

judge does not influence the jury in arriving at its verdict, it certainly serves no purpose at all. Therefore the record should not be encumbered by the expression of his personal opinion. On the other hand, if it does so influence the jury, and all lawyers know that it does, it is a clear invasion of the province of the jury, and therefore a flagrant usurpation of the prerogative of the jury to weigh the evidence, and should be corrected."

Referring to the article in the New Republic, and the statement therein that in some of the States, however, chiefly in the South and West, the power has been taken away from the courts to charge on the weight of the evidence, it is set down in Cyc. that the rule in the majority of the States, as a result of the constitutional or statutory enactment, is against the permitting of the court to comment on the weight of the evidence. Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Missouri, Mississippi, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington and West Virginia are cited as against it, from which it appears that the rule is overwhelming against the courts commenting on the weight of the testimony.

The wisdom or unwisdom of the rule under discussion, like that of most other rules that relate to practice, depends very largely upon two things:

- (a) The construction or application of the rule.
- (b) The judge who administers it.

If the rule permitting the court to comment on the weight of the evidence be construed to warrant the court in effect to himself make an argument in the case, it is manifestly dangerous.

If the rule forbidding the court to comment on the weight of the testimony on the other hand is construed to mean that the court is shorn of all authority and power to advise the jury as to well settled rules of law that should be considered in determining the facts and issues, as some judges seem to think was the purpose of the rule, the result, of course, is to turn the jury loose, and leave them like the jury in a justice's court, practically the judges of the law as well as of the facts. One south Texas district judge through a series of years took this view of the meaning of the statute, and he had one standard form of

charge in negligence cases which covered about one-half page and consisted of a brief definition of negligence and a brief definition of contributory negligence, and a brief statement to the jury that if they found the defendant guilty of negligence and the plaintiff was not guilty of contributory negligence as thus defined, to find for plaintiff; but if the defendant was not guilty of negligence or the plaintiff was of contributory negligence then to find for the defendant. When the charge came before the Court of Appeals, it was promptly condemned as too general, and yet it must be admitted that many expressions and the rulings in the earlier cases gave strong warrant for this trial court's view.

The trend of our recent decisions is towards the clear establishment and full application of the rule that it is not only the right of the trial judge but his duty to very fully and specifically apply the law to the facts of the very case.

As to the judge who may apply the rule, manifestly the vesting of the power to comment on the weight of the testimony in the ideal judge would hardly be dangerous.

But, on the other hand, the ideal judge is not always on the bench. Indeed, the altogether ideal judge is rarely and perhaps never found. Human nature has by no means reached perfection.

And again, if the ideal judge be on the bench, there is no need of the intervention of a jury at all.

Logically considered, it would seem that the calling for a jury by parties is a clear indication that they want the facts passed on by a jury and not by the court, and that it follows, as a matter of course, that they want the jury to pass on the facts uninfluenced by the comment of the court.

But the arguments pro and con on this question would easily fill a good sized volume.

It is sufficient for the purposes of this paper to call attention of the bar to this pending measure—we understand it is still under consideration by Congress—and if individual members of the bar feel interested in the matter, they can urge their views on their representatives in Congress.

Among the earliest acts of Congress, after declaration of war, was the law providing for the raising of an army by draft. The constitutionality of this act was raised in a case in Georgia, and

its constitutionality upheld by the Honorable Emory Speer, in a terse, strong opinion.

I cannot resist a quotation from that opinion, that it may go into the Year Book of this Association, with the hope that what this distinguished judge said may pass under the eye of some who might otherwise not notice it. He said:

"There remains to be considered the contention that Congress cannot employ the National Army to be created by virtue of this legislation in foreign lands or beyond seas. If this is true, then indeed is our country impotent. Then must its people indeed suffer in their own homes, in their cities, and on their farms all the horrors of invasive war. Its military leaders must ignore the settled principles of their science, that the best defensive is the most vigorous offensive. The keen swords of its sons, instead of flashing over the guard of the enemy and piercing his vitals, must be held immovable, as if on an anvil, to be shattered by the reiterated blows of his hammer. Deprived of our aid in the field, successive defeats will visit and crush our Allies. Their lands conquered, their navies taken, we must then in turn, solitary and alone, meet on our own soil the impact of victorious and barbarous legions whose laws do not forbid their service abroad, but which inspire their fierce and veteran armies to deeds of conquest in every clime.

"Was this contention maintainable, the misguided men who for their personal ease advance it might all too late discover their fatal error. They would discover it in the flaming homesteads, in the devastated fields, in murdered brethren, in outraged wives and daughters, in their lands, their factories, their merchandise, their stock, their all, coolly appropriated by the conqueror as his own; their institutions destroyed; homeless, landless and beggars to spend whatever interval of degraded life remains to them, in abject slavery to the conqueror."

In the same law journal, from which I get this extract from Judge Speer's opinion, is set forth, in a speech by the Honorable Charles E. Hughes, before the American Bar Association, an extract from Lincoln's opinion on the same question. This extract is such a fine example of Lincoln's clear, terse English and is so applicable to our present situation, that I quote it also:

"In this case, those who desire the rebellion to succeed, and others who seek reward in a different way, are very active in

accommodating us with this class of arguments. They tell us the law is unconstitutional. It is the first instance, I believe, in which the power of Congress to do a thing has ever been questioned in a case when the power is given by the Constitution in express terms. Whether a power can be implied when it is not expressed has often been the subject of controversy; but this is the first case in which the degree of effrontery has been ventured upon of denying a power which is plainly and distinctly written down in the Constitution. The Constitution declares that 'the Congress shall have power to raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.' The whole scope of the conscription act is 'to raise and support armies.' There is nothing else in it. Do you admit that the power is given to raise and support armies, and yet insist that by this act Congress has not exercised the power in a constitutional mode, has not done the thing in the right way? Who is to judge of this? The Constitution gives Congress the power, but it does not prescribe the mode, or expressly declare who shall prescribe it. In such case Congress must prescribe the mode or relinquish the power. There is no alternative. The power is given fully, completely, unconditionally. It is not a power to raise armies if State authorities consent; nor if the men to compose the armies are entirely willing; but it is a power to raise and support armies given to Congress by the Constitution without an 'if.' The principle of the draft, which simply is involuntary or enforced service, is not new. It has been practiced in all ages of the world. It was well known to the framers of our Constitution as one of the modes of raising armies, at the time they placed in that instrument the provision that 'the Congress shall have power to raise and support armies.' \* \* \* Wherein is the peculiar hardship now?"

This paper has already been too long drawn out and I shall not tax your patience with any extended review of the Federal enactments during the past year. A supplement to the United States Statutes covering congressional action during the last twelve months, is very interesting reading. It carries on its face evidence that with all that had gone before, even Congress was still a bit slow to appreciate what a stupendous task we had undertaken in the embarkation on the war. But the acts also show that Congress very readily has awakened to the full realiza-

tion of the situation, and further, to the realization that the successful conduct of the war calls for faith in the executive and the concentration of power in the President and his assistants and the placing at his disposal of all the resources of the nation, in a way and to an extent never thought of before.

Such a degree of power has been vested in the President until the statement has been made in respectable lay magazines, in substance, that the President of the United States is today vested with larger discretion than any ruler of modern times.

This full discretion has been vested by the almost unanimous consent of Congress, and practically without challenge or demur on the part of the people.

Extraordinary power has been placed with the administration up to this time without raising the slightest suggestion of fear on the part of the people. Unparalleled power has been given to the President, but the people are not afraid.

While we go on with the ordinary vocations of life, and on the surface there is little to indicate that our people are now the mainstay of one side of this great conflict, every day has made it more and more manifest that the American people have absolute and abiding faith in their leaders; that party divisions are discredited and are being lost sight of for the time being; and that a united people, with capacity and resources second to none the world has ever known, face the future with the determination to win the great fight, to be satisfied with no other result, and with full confidence that however dark the intervening days that are in store for us may be, and how much sacrifice we may have to make, that by God's grace, and because it is His will, the right shall triumph; that autoeracy and the rule of one people over another shall be driven from the earth; and that all men and all women shall indeed be free.

MR. ESTES: While the spell of the patriotic sentiments expressed by the President is upon us, I want to say that we have with us today a young man, who had just begun the practice of law, as I understand it, in this State, and who went into the service of the country, and belongs to an aviation corps near here. I believe I can say that there is no body of our citizens more loyal than the lawyers are, and there is no lawyer who goes out into battle who is more encouraged than by his breth-

ren at the bar. I want to nominate for honorary membership in this Association Mr. Jeremiah Clark, a young soldier here, and I move that his election be made unanimous, and by a rising vote. (Applause.)

MR. H. G. HART: I know the young man to whom Mr. Estes refers, and as to whose ability as a flier I wish to make the prediction that he will succeed in flying higher and more to the purpose, by reason of his training as a lawyer, than he otherwise could have done. I think the Bar Association is honoring itself in admitting him as a member. (Applause.)

The motion was unanimously adopted by a rising vote.

THE PRESIDENT: A few months ago the ideal of the highest of all callings was that of the defense of the rights and liberties of the people before the courts. But even in the conception of lawyers that ideal has given place to another, and today the soldier who serves his country is to us the highest type of citizenship. Those who go into the aviation corps, to say the least of it, stand second to none. I believe I voice the feeling of this meeting when I ask Mr. Clark to say a few words to us. (Applause.)

MR. JEREMIAH CLARK: Gentlemen, I appreciate your action in making me an honorary member of the Texas Bar Association. I enjoyed the President's paper very much. At the outbreak of the war I regretted to have my attention distracted from the study of law, and also from the practice, although I had just begun. I had been with my father, and had become deeply interested in the work. But at the beginning of the war I felt that I was needed more on the front than I was needed in front of the bar, and I went in the aviation corps, and I shall try to the best of my ability to uphold the honor of the lawyers in the work on the front. I thank you very much for the compliment. (Applause.)

THE PRESIDENT: We all earnestly hope that this war will be so short lived that our new honorary member will have no chance to be an Ace, but I have an abiding faith that if the war does continue for such length of time he will honor us by himself being in that great category. (Applause.)

The next order of business on the program is an address by

Judge Hiram Glass, on the "History and Purposes of the American Bar Association." (Applause.)

MR. GLASS: Mr. President and Gentlemen of the Texas Bar Association: This paper is submitted with the hope that it will stimulate an interest in the American Bar Association, and cause a goodly number of Texas lawyers, who have not heretofore affiliated with the National body, to become members, and I, as Vice-President for Texas, would be glad to have the names of as many of the Texas members as feel disposed to do so hand in their names, and I will take great pleasure in having them endorsed and recommended by the local council and elected to membership in the Association.

#### HISTORY AND PURPOSES OF THE AMERICAN BAR ASSOCIATION

BY HIRAM GLASS.

It is believed that any assembly of representative lawyers will naturally be interested in anything that pertains directly to their National organization, the American Bar Association.

That interest is quickened and given added importance because of the patriotic and unselfish service that the Association has given to the Government in the prosecution of the war with Germany.

As between the principles of divine right with the subordination of individual liberty, and the organization of the Government for the preservation of that liberty, the American Bar Association is unmistakably and irrevocably committed to the preservation of liberty upon the basis of popular authority.

In the last meeting of the American Bar Association, held at Saratoga Springs, New York, September, 1917, the Executive Committee, through the Hon. Elihu Root, submitted a report defining the attitude of the Association toward the titanic conflict of which this Nation had, then but lately, by a declaration of war, made itself a party.

The resolutions which were unanimously adopted are as follows:

"The American Bar Association declares its absolute and unqualified loyalty to the Government of the United States. We are convinced that the future freedom and security of our country depends upon the defeat of German military power in the present war.

"We urge the most vigorous possible prosecution of the war with all the strength of men and materials and money which the country can supply.

"We stand for the speedy dispatch of the American Army, however raised, to the battle front in Europe, where the armed enemies of our country can be found and fought and where our own territory can be best defended.



"We condemn all attempts in Congress and out of it to hinder and embarrass the Government of the United States in carrying on the war with vigor and effectiveness.

"Under what cover of pacificism or technicality such attempts are made, we deem them to be in spirit pro-German and in effect giving aid and comfort to the enemy.

"We declare the foregoing to be overwhelmingly the sentiment of the American Bar."

Since the adoption of these resolutions, the officers and members of that Association have tendered and devoted their best energies without pay to the service of our Government, and these young, vigorous wearers of the khaki who are risking their lives, at the sacrifice of their comfort, ease and property in order that the institutions which we cherish and the justice which we love may be handed down to our children.

The American Bar Association is not an old organization. Indeed, comparatively speaking, it is a very young one, and in this day of co-operation it seems strange that the lawyers of America were so slow in launching what has proven to be one of the most pleasant and helpful associations among the learned professions. The American Bar Association was organized and held its first meeting at Saratoga Springs, New York, on the 21st day of August, 1878, ten years after the organization of the Galveston, Texas, Bar Association, in 1868; and after the organization of the Association of the Bar of the City of New York, in 1870, and the Bar Association of St. Louis, in 1874. The Texas Bar Association was organized in 1882.

The American Social Science Association, which had been founded in 1865, held a meeting at Saratoga Springs, New York, in 1877, at which time Hon. Simeon E. Baldwin of Connecticut read a paper on "Graduate Courses in Law Schools," which was more or less warmly discussed by the lawyers present, including David Dudley Field, Chancellor Wm. G. Hammond, General Alexander R. Lawton and others. The discussion led to a resolution offered by Carleton Hunt of New Orleans, as follows:

"Resolved, That the influence of schools of law in promoting legal education in the United States has proved most beneficial; and the Association of Social Science commends the care, future encouragement, and future development of the schools to the members of the legal profession and to the friends of learning in general."

The trend of thought put in motion by the proceedings before the Association of the Social Science led to a casual conversation between Mr. Baldwin and Mr. Toche of New Orleans, in which it was suggested that it would be a good thing for the legal profession to create a special organization to deal with the subject of jurisprudence in a broader way, in the shape of a National Bar Association.

Mr. Baldwin, who was a member of the Connecticut State Bar Association, brought the matter before that organization in January, 1878, and on his motion it was voted to create a committee of three to be appointed to consider the propriety of organizing an association of American lawyers. The President of the Connecticut Bar Association appointed on that committee Richard D. Hubbard, then Governor of the State, Simeon E. Baldwin and William Hammersley, and this committee, on April 28th, 1878, sent to many of the well known representative lawyers of the country a circular, reading as follows:

"It is proposed to have an informal meeting at Saratoga, New York, on Wednesday morning, August 21st, 1878, to consider the feasibility and expediency of establishing an American Bar Association. The suggestion came from one of the State Bar Associations in January last, and the undersigned have been favorably impressed by it. A body of delegates, representing the profession in all parts of the country, which should meet annually, for a comparison of views and friendly intercourse, might be not only a pleasant thing for those taking part in it, but of great service in helping to assimilate the laws of the different States in extending the benefit of true reform, and in publishing the failure of unsuccessful experiments in legislation.

"This circular will be sent to a few members of the Bar in each State, whom, it is thought, such a project might interest.

"If possible, we hope you will be present at the day named at Saratoga; but, in any event, please communicate your views on the subject of the proposed organization to Simeon E. Baldwin, New Haven, Conn., who will report to the meeting the substance of the responses received."

In response to the request contained in the foregoing circular, many letters of approval were received from the leading lawyers of the United States, including Chas. Devens, Attorney General of the United States; Wm. M. Evarts, Secretary of State; Charles O'Connor of New York. A. R. Lawton of Georgia, J. Randolph Tucker of Virginia, E. J. Phelps of Vermont, David Davis, United States Senator from Illinois, John W. Daniel of Virginia, Benjamin Harrison Brewster of Philadelphia, and many other equally eminent jurists. From one of the letters of approval addressed to the committee, I make the following quotation:

"The suggestion contained in the circular of invitation is that in addition to the pleasure arising from the friendly intercourse of the members growing out of such an Association, it might be of service in assimilating the laws of the different States and extending the benefit of true reform.

"I very heartily concur in the views suggested. I cannot doubt that anything which will bring the leading lawyers of the different

States into more frequent communication and more intimate relations will tend to a better understanding of our various systems of laws.

"Our professional employment is necessarily exacting and the majority even of our leaders have little time or inclination to examine the peculiarities of the laws of other States, except as the necessities of their practice require it.

"A very striking illustration of the want of familiarity of the lawyers of one State with the laws of neighboring States is found in those States where the common law forms of practice still prevail, in reference to the effect of code reform. Thus we see one of the nestors of the profession, one who has graced the Supreme bench of this State, and been chief law officer of the Federal Government, in an exhaustive and polished magazine article, declaiming against all code reforms, and attributing the prostitution of the writ of injunction in the railway war in New York to the vice of code reform. When in truth, as his own argument showed, the absence of which he complained grew solely out of the defective State judiciary act giving jurisdiction to all the Supreme judges in any part of the State to issue the writ in a case pending in any other part, as well as in his own district.

"The whole article was based (on) the fallacy that this provision emanated from the code of procedure, with which it did not have the slightest connection. This review by this great lawyer related to the laws of an adjoining State.

"More intimate communication between the lawyers of the different States would prevent such misapprehensions."

Accordingly, on the 21st of August, 1878, about one hundred members of the bar from different sections of the United States met in the Town Hall in the rooms of the Supreme Court in Saratoga, and proceeded to organize by electing John H. B. Latrobe of Baltimore, Maryland, as temporary chairman, and Francis Rawle of Philadelphia, and Isaac G. Thompson of Troy, as temporary secretaries.

A committee on permanent organization and credentials reported the name of Benjamin H. Bristow of Kentucky as permanent chairman. The meeting then proceeded to organize a National American Bar Association, and elected as the first president Hon. James O. Broadhead of St. Louis, Missouri, who, on taking the chair, said: The purpose of the Association was a noble one, and he believed that it should seek to avoid becoming an agitator of the law, and rather aim to codify and harmonize than to revolutionize or reform the law. The Association should watch the progress of events as they occur, and be ready to act on all matters of importance when the need arrives. The Association should not be ephemeral, but address itself honestly and earnestly to the great objects properly within its scope. Such an organization is new here, but it is not new in other countries. The Order of Advocates is an organization that has stood for cen-

turies in France, and has done much to promote the science of jurisprudence. So this Association, if faithful, may perform a similar work if all address themselves earnestly to the great work before it.

The Executive Committee was appointed and requested to devise and report at the next annual meeting measures for establishing close relations between the American Bar Association and the Bar Associations of the several States.

By-laws for the government of the Association were adopted on February 12th, 1879, by the Executive Committee, and the organization of this great and useful Association was completed.

The purpose of the Association as shown in the first article of its Constitution is:

"Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law and encourage cordial intercourse among the members of the American Bar."

The necessity of the objects indicated in the foregoing article of the Constitution of the Association are aptly illustrated in a quotation from George Sharwood:

"There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity, in which so many delicate and difficult questions of duty are continually arising. There are pitfalls and mantraps at every step and the mere youth, at the very outset of his career, needs often the prudence and self-denial as well as the moral courage which belong commonly to riper years. High moral principle is the only safe guide, the only torch to light his way amidst the darkness and obstruction."

Also the following from Edward G. Ryan:

"Craft is the vice, not the spirit, of the profession. Trick is professional prostitution. Falsehood is professional apostasy. The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wildest devices. The power of integrity is the rule; the power of fraud is the exception. Emulation and zeal lead lawyers astray; but the general law of the profession is duty, not success. In it, as elsewhere in human life, the judgment of success is but the verdict of little minds. Professional duty, faithfully and well performed, is the lawyer's glory. This is equally true of the bench and of the bar."

Abraham Lincoln said:

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is

often a real loser—in fees, expense and waste of time. As a peace-maker, the lawyer has a superior opportunity of being a good man. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereupon to stir up strife and put money in his pocket? A moral tone ought to be enforced in the profession which would drive such men out of it."

In 1908 the American Bar Association adopted canons of professional ethics, and among other things recommended the following oath for admission to the bar:

**"I DO SOLEMNLY SWEAR:**

"I will support the Constitution of the United States and the Constitution of the State of ————;

"I will maintain the respect due to Courts of Justice and judicial officers;

"I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

"I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

"I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

"I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

"I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. SO HELP ME GOD."

From the foregoing it is easily seen that the American Bar Association subscribes to lofty ideals. But it does not deal in ideals only. It is an intensely practical and hard working association of the best legal talent in the United States. It deals with live practical questions affecting not only the legal profession but every other profession and business of the country.

Much of the useful labor of the Association is performed by and through affiliated bodies, among which is the National Conference of Commissioners on Uniform State Laws, about which you will hear more from that able and polished lawyer from New Orleans, my friend, Mr. Hart.

Then there is the American Institute of Criminal Law and Crimi-

nology; the Special Conference of Representatives of Bar Associations, composed of three delegates from each State Bar Association and two delegates from each local Bar Association; the Comparative Law Bureau; the Section of Legal Education; the Judicial Section, and the Section of Patent Trade Mark and Copyright Law.

These affiliated bodies are attended by able lawyers, members of the Association, and they devote themselves laboriously to the accomplishment of the purposes for which each section is created, and their work is of great value to the country generally.

The meetings of the American Bar Association are held annually, generally about the last of August or the first of September in different cities in the United States, located so as to serve the convenience of the majority of the members.

Any reputable lawyer who has been admitted to the bar for a period of three years is eligible to membership in the Association, and it is earnestly desired that every such lawyer at once become a member of the National organization and assist in making it one of the most powerful and useful of the entire country.

No initiation fee is required, but each member pays annual dues of six dollars, which entitles him to one copy of the Annual Report of the Association, consisting generally of about one thousand pages and containing the proceedings of the Association for that year, together with the addresses made and papers read before the Association.

This report is easily worth the amount that each member pays as annual dues.

In addition to the Annual Report, each member of the Association receives the American Bar Association Journal, issued quarterly, and containing much valuable information concerning the legislation and judicial decisions of foreign countries as well as of our own Nation. The subscription price of this Journal to individuals not members of the Association is \$3.00 per year. Members of the Association, of course, receive the Journal free of charge.

I have had members of the Texas bar say to me that they would be glad to become a member of the American Bar Association if they were able to attend its meetings. Attendance on the meetings of the Association is not at all necessary to membership, but each member can, by reading the Annual Reports of the Association and the American Bar Association Journal, receive all of the benefits of the work of the Association and its affiliated bodies, even though he should never attend an annual meeting.

The American Bar Association is not intended, nor is it desired, to take the place or supersede the State Bar Associations. On the contrary, it recognizes the usefulness of the State Associations and encourages their maintenance and work. There is ample room for State Bar Associations, and I have never known a member of a State Asso-

ciation to be less loyal thereto on account of his membership in the National Association.

Membership in the American Bar Association is granted upon the recommendation of the Local Council of each State, and no dues are required until the person recommended is notified of his election. All that is required is that you hand in your name with the statement that you have been admitted to the bar for a period of three years, and any member of the Local Council will be glad to take the necessary steps to have you elected as a member.

The greater the membership from any one State, the greater, of course, is the influence of that State in the National Association. The influence of Texas would be immeasurably increased if every member of the Texas Bar Association would become a member of the American Bar Association, and each member thus connected with the National Association would become a direct beneficiary of all of the work and activities of the National body.

I have not spoken of the social features of the American Bar Association, for as busy lawyers we have but little time or thought for such affairs. Yet it is a fact that no class or profession are so capable of thoroughly enjoying the companionship and society of their brothers in the profession.

Whilst there are rivalries between opposing lawyers, they are on a high plane and do not result in jealousies or envious feelings. I believe this can be more truthfully said of lawyers than of any other profession.

Borrowing the language of an eminent lawyer, I may say:

"We may justly console ourselves with the reflection that we belong to a profession which above all others shapes and fashions the institutions in which we live, and which, in the language of a great statesman, 'is as ancient as the magistracy, as noble as virtue, as necessary as justice'—a profession, I venture to add, which is generous and fraternal above all others, and in which living merit is appreciated in its day, according to its deserts, and by none so quickly and so ungrudgingly as by those who are professional contemporaries and competitors in the same field. We have our rivalries—who else has more?—but they seldom produce jealousies. We have our contentions—who else has so many?—but they seldom produce enmities. The old Saxons used to cover their fires on every hearth at the sound of the evening curfew. In like manner, but to a better purpose, we also cover at each nightfall the embers of each day's struggle and strife. We never defer our amnesties till after death, and have less occasion, therefore, than some others to deal in *post mortem* bronzes and marbles. So much we may say, without arrogance, of ourselves—so much of our noble profession."

JUDGE GLASS: I would like to have the names and addresses of as many lawyers as feel disposed to join this Association. I am sure you will not regret it.

THE PRESIDENT: The object of Judge Glass' paper is to bring home to the members of this Association, as I understand it, the scope and purposes of the American Bar Association, and the importance of Texas lawyers being represented therein. I have never myself attended a meeting of this Association, and have only this year become a member and looked into the pages of its publications. While it has been a very busy year, and I have had only the slightest opportunity to find out what is contained within those pages, I have gone far enough to feel deeply impressed with the idea that each individual lawyer who will align himself with the American Bar Association will be a better lawyer for so doing, and that if a large proportion of our lawyers in the State will so align themselves our own Association from year to year will be very much more largely attended, and we will find ourselves in touch with the best thought of the whole country, and that we will make a more rapid development in an intelligent working out of better proceedings and practice and systems of substantive law than we have ever known before. I trust sincerely that Judge Glass will be very successful in enrolling a great many Texas lawyers.

There is a communication here from Major John C. Townes, with reference to a subject that is not only a matter of interest to Texas, but that has engrossed several months of earnest attention, not only of the officers of the army, of the Provost Marshal General, of the American Bar Association, but of your President as well. This communication from Major Townes I will read to you.

The President then read the communication from Major Townes, and read his telegram to Major Townes in response to said communication.

THE PRESIDENT: I have not heard anything from Major Townes, and as he indicates in his letter that he is heavily loaded down with work, he may be unable to come.

MR. McCLENDON: He came in on the noon train, and I understand he is now preparing a resolution.



THE PRESIDENT: I would suggest the appointment of a special committee, and that whatever committee acts on it, it be made a special order of business.

MR. SANER: I move that the Chair appoint a special committee of five to consider the matter.

(Major Townes entered the hall at this juncture.)

THE PRESIDENT: Major Townes, I did not know you had arrived, and not having heard from my telegram I thought probably you were not coming, and I have just read your letter to the Association. A motion has just been suggested that a committee be appointed to consider any resolution that you might have to offer. But I can say without any express authorization, because I know that meets the will of the members, that this meeting is at your disposal now, to take up your matter in any way you think best. We would be glad to hear from you, and to appoint a committee, or consider any resolution, and handle the matter in any way.

MAJOR JOHN C. TOWNES, JR.: Mr. President and Gentlemen: That is very kind of you, indeed, and I want to express my appreciation of your attitude and the attitude of the Association towards the matter. If it is not out of place, I can state in a very few words what I am driving at. You all know, and are realizing more and more every day, that this country is at war. I take it you know that our Government has decided upon a selective service system or method of raising an army. I take it you know that an army is absolutely essential to the winning of the war, and, further, than an American army is absolutely essential. I assume that you further know that it is not only necessary to have an effective, efficient, American army, whose morale is all it should be, but that it is equally important to have the sympathetic co-operation of all of our citizens at home. These remarks have direct bearing on the matter that I have in mind.

Last year Congress enacted the selective service law and empowered the President to promulgate certain regulations to make it enforceable and effective. The matter of selecting an army is a serious one. It is a new thing. It is a thing that affects every American home. The President promulgated our

selective service regulations, which provide for the classification of our boys into different groups, some of whom shall serve first, and others be later called, and others still later, according to their status at home. It is absolutely imperative that we place each boy in his proper class. Failure to do so works an injustice on the boy, sends him disgruntled to the army, weakens the morale of our fighting forces, breeds discontent at home, and if the administration of the law were greatly abused, would lead, no doubt, to a social unrest and a development of a Bolshevik situation in America, such as we have read of elsewhere. To assist these boys in filling out their questionnaires and gaining their proper classification, the President called upon the lawyers of the United States to render a patriotic service, without price and without charge; and not only to assist our boys in correctly filling out their questionnaires, but to counsel with them, to counsel with these exemption boards, and to do all other necessary things that they might be called upon to do; not with a view of keeping a man out of the army who should be in it; not with a view of placing a man in the army who should receive deferred classification; but with the sole view of getting our boys classified correctly.

To further this program, the President appointed, or with his approval there was appointed, a permanent legal advisory board of three members, to be attached to and assist each local exemption board. In Texas there are 279 of these boards. In addition to the permanent legal advisory boards, numerous associate members were chosen, appointed and qualified. It was certainly understood, and is yet, that it was the patriotic duty of each of these members of these boards, as well as all other lawyers, to put their shoulders to the wheel, to make a personal sacrifice, if necessary, to assist these boys in gaining a correct classification under the draft. Our Texas lawyers have rendered a remarkable and patriotic service. I would say ninety-nine per cent — perhaps even more — of our Texas lawyers have conducted themselves magnificently, and it should be the pride of this Association, and of each one of our members, that the lawyers of Texas have rendered this splendid service. But, gentlemen, there are a few lawyers in Texas who have so forgotten themselves, who have so forgotten their patriotic duty, that they have obstructed the administra-

tion of the draft law and have injured and hampered the efforts of our Government in raising its army. I am going to be absolutely frank with you. I did not come here to make any speech. I came here to ask you for assistance. Mind you, I am talking about a very small minority of our lawyers, Mr. Lee. I know of one fee of \$5200.00 in cash that was paid by a registrant to a lawyer for lobbying before a district exemption board. I have not the check in my possession. I have seen the cancelled check. It is now in the possession of the secret service. I know of a couple of \$2500.00 fees. I have also seen those cancelled checks, which are in possession of the Department of Justice. I have seen several \$1000.00 cancelled checks, paid as fees. I have seen the cancelled checks paid for a number of smaller fees, as the result of an investigation which we started recently. I mention those things, in passing, merely to show you that this is not a theory, but a fact, that this deplorable condition does exist among us. I mention these things so that you will not think that I have come here on suspicion, as it were, to ask your help, but I have come here because investigations made by my department and by the Department of Justice have revealed a most shocking condition.

Let me tell you the effect—and the important effect—of taking money from these boys. I know of a case in which a boy—I do not want to go into too much detail and do not want to take up your time—

THE PRESIDENT: Go ahead. We want to take up your time.

MAJOR TOWNES: The local exemption boards have the authority to pass upon and classify boys from a standpoint of dependency. If the boy has a dependent wife or children or parents, the local board has the right to place him in a deferred class—2, 3 or 4, as the case may be. The local board has no right to place him in a deferred class on account of an agricultural or industrial claim. That is a matter entirely within the jurisdiction of our four district boards. The local board, it is true, makes a recommendation to the district board, but the power to classify him on that ground is with the district board. So your unmarried boy, who has no dependents, but has a perfectly good agricultural claim, will be placed in Class 1 by the local board, you see, and his questionnaire forwarded to the

district board, and that board will probably place him in class 3 or 4. I know of a case of that kind, where the local exemption board placed the man in Class 1, and forwarded his questionnaire. Not being familiar with the intricacies of this draft law, the boy felt that he had a good claim for deferred classification, but he did not know just how it should come about, or who should give it to him, and he felt that the local board should have given it to him. A lawyer approached him and told him that for \$500.00 he could get him a deferred classification. The boy paid the money, his questionnaire was forwarded to the district board, and, of course, the district board gave him the deferred classification to which he was entitled, and which he would have received in any event. The lawyer did nothing but collect this fee and endeavor to lobby with the district board. The boy was given deferred classification, and the news got back to his local board that this had been done. He talked about it among his friends, and they asked him how he got it, and very naturally this boy told them that he got deferred classification by paying Lawyer Jones or Smith \$500.00—the most natural thing in the world. Now, the poor boy that he makes that statement to immediately gets the impression that if he had \$500.00 he would get deferred classification, and that this is a rich man's war and a poor man's fight. Now, I am not talking theories. I am telling you what comes back to me from registrants over the State. I know a good deal about how they feel. Other boys hear of that transaction, and they know nothing was done by the lawyer to deserve a \$500.00 fee. Therefore, they conclude, knowing no members of the district board, that the \$500.00 was not retained as a fee, but that a large portion of it went to the district board as a bribe. I do not mean the statement as any reflection on the district board, but I am trying to give you the impression that the boys get, and they think the draft officials are corrupt. They are naturally dissatisfied with the classification, and the boy who is in Class 1 feels that he has been jobbed. I know of another case, where the boy belonged in Class 1, and it was the duty of the local board and the district board to place him there, and he employed a lawyer and paid his fee, and the district and local boards did place him in Class 1. What did his lawyer tell him? He told him: "I told you at the beginning that under the law you were entitled to be placed in a de-

ferred class, and you are still so entitled, but your local board here is made up of a bunch of thugs and crooks, and your district board is influenced by them, and your district board has got it in for you personally, and they have persecuted you and refused to give you the classification to which you are entitled." Then that boy goes through the community preaching that sort of doctrine until he is sent to the army, and when he goes to the army he goes disgruntled and demoralized, and his parents and friends at home feel that the draft law is not being impartially administered.

I merely mention these instances to show you the effect of this thing. General Crowder, the Provost Marshal General at Washington, who has charge of the draft work for the United States, has denounced this practice in no mistakable terms. It is a practice which has undermined and weakened the efficiency of the draft. It is a matter that is going to lead to further trouble as the situation grows more tense, and as more of our boys are sent across and more of our boys are lost in battle, and as more homes are grief-stricken, and parents think back to why their boy was sent and how he was sent, it is going to lead to more trouble, and the condition will be worse instead of better.

Gentlemen, here is a practical thought that I want to give you. Our laws, frankly, are hardly adequate to cope with the situation by criminal prosecutions. The man that takes the \$5000.00 fee can probably be indicted for interfering with the administration of the draft and the recruiting of an army, but it is going to be difficult indeed to make a technical case against him under our present laws. We will, therefore, have to use the weapon of public opinion as much as any other means at hand to put an end to this hellish practice. You gentlemen can very materially assist the War Department by denouncing this thing as unethical and unpatriotic and unbecoming a Texas lawyer. You can very materially assist us in our work. General Crowder wrote me, requesting me to come here and lay this matter before you, confident, as he is, and confident, as I am, that you will assist us in discouraging this practice, that you will assist us in absolutely stopping this practice.

Since I got off of the train and ate lunch I have drawn up a resolution, that is very crude. Before I read it, I want to say that I have made some little investigation in the last thirty

days, with the facilities I have had at hand, which are limited. Out of 110 counties I have investigated, I have found thirty counties where this practice has been indulged in to an extent that you might term just rampant—fees paid ranging from ten dollars to thousands of dollars. They are the counties of Anderson, Austin, Bell, Burnet, Clay, Coke, Comal, Cottle, Denton, Gillespie, Hardin, Kerr, Maverick, McCulloch, Nacogdoches, Nolan, Rains, Real, Reeves, San Antonio (city), Stephens, Tom Green, Travis, Trinity, Uvalde, Upshur, Victoria, Washington, Williamson and Young. The investigation is by no means complete. This resolution is crudely drawn, and perhaps should be referred to a committee before being presented, or if you like, I will read it now. I will just tell you right now, I was not mealy-mouthed about writing this resolution. (Applause and Voices: "Read it now.")

"WHEREAS, our beloved country is now engaged in the unprecedented world war, bending its every energy to break and overcome Prussianism and tyranny and make the world safe for Democracy; and,

"WHEREAS, our National Congress has wisely adopted certain methods of drafting an army by the selective service process, and has authorized our President to prescribe certain rules and regulations for the proper and effective operation and enforcement of the selective service law; and,

"WHEREAS, certain lawyers in each county in Texas and other States have been designated by the President as members of the legal advisory boards, and certain other lawyers in each county have been duly designated as associate members of such local advisory boards, for the express purpose of rendering efficient and free advice and assistance to registrants and officials engaged in the administration of the selective service law, in the matter of securing proper and just classifications under the law; and,

"WHEREAS, the President issued a proclamation coincident with the promulgation of the selective service regulations, calling upon each and every lawyer, whether expressly designated as a member or associate member of a legal advisory board or not, to assist registrants and draft officials gratis in every way possible, to the end that the selective service law and regulations might be impartially and properly enforced, and all possible

errors avoided, and all lawyers were in effect drafted by the Federal Government to perform this necessary and patriotic service during the existing emergency; and,

“WHEREAS, the very great majority of the members of the Texas Bar Association and the Texas lawyers generally have rendered and are rendering splendid, patriotic service to their country, by gladly responding to the request of the President as above set forth, and have advised, assisted and counseled with registrants and draft officials, without fear or favor, and without charge;

“BUT, WHEREAS, it has been brought to the attention of this Association that a few Texas lawyers have been so unmindful of their duty to their country, and so deaf to the appeal of the President, and so unpatriotic in their actions, and so completely actuated and moved by selfishness and greed as to demand, receive, or extract from registrants and their representatives, fees, and in some instances very large and shocking fees, for services rendered, or supposed to be rendered, in behalf of such registrants in the matter of assisting, or attempting to assist, such registrants in obtaining deferred classification or avoiding military service altogether; and,

“WHEREAS, the War Department, through the Provost Marshal General, has found such pernicious activities upon the part of paid attorneys to be most detrimental to the Government in the raising of an army:

“NOW, THEREFORE, Be It Resolved by the Texas Bar Association, in annual meeting duly assembled, as follows:

“First: That this Association hereby renews and reiterates its fidelity to our National Government and to the President and to our fighting forces, whether on land or sea.

“Second: This Association hereby congratulates, thanks and commends that great majority of Texas lawyers who have been and are so generously assisting our Government in the proper administration of the selective service law.

“Third: This Association hereby denounces as unethical, unpatriotic, and far beneath the actions of a decent Texas lawyer the practice upon the part of a few Texas lawyers of charging registrants fees of any amount, whether large or small, for services in connection with the draft, or in any wise pertaining thereto. The contractual relation of attorney and client should

in no event exist between a Texas lawyer and a registrant or his representatives, so far as the enforcement of the selective service regulations is concerned.

"Fourth: This Association hereby strongly recommends that those Texas lawyers who have charged registrants and their representatives fees for services rendered, or supposed to have been rendered, or who engage in such practice in the future, be summarily dismissed from this Association, if they be members, and disbarred by competent authority from the further practice of law in Texas."

Gentlemen, that may be a little more severe than you had in mind, and it ought to be re-worded a little and polished up, as I wrote it hastily at the hotel just now. But I want to tell you that if we are going to be mealy-mouthed about this thing we might just as well take down our sign. (Applause.) I have no personal interest in this thing more than you have. I have no more patriotic interest in it than you have. It just chances that I have been placed in a position to have a little more information about it than you have, and I request that you gentlemen take some appropriate action that will denounce this business and put this Association on record. And, Mr. Chairman, if I may be permitted to do so, I move the adoption of the resolution. I thank you.

MR. W. B. PADDOCK: May I ask Major Townes a question? Should not some condemnatory language be used with reference to attorneys who are trying to procure the dismissal of men after they have been inducted into the army?

MAJOR TOWNES: Yes, sir; I think that is a splendid suggestion and ought to be added. I think it should be covered, and, if need be, I have some personal experiences to give as the basis for my conclusion. I think it should be included in the resolution.

MR. McCLENDON: I want to ask Major Townes one question. In connection with the enforcement of the draft law, is your language susceptible of the construction that an attorney should not appear in a case in court where a registrant had been indicted?

MAJOR TOWNES: I did not intend to convey that idea, and it



may be wise to refer this resolution to a committee before it is voted on, for some of you gentlemen to correct the errors in it. Any registrant who is being prosecuted has a right to his day in court, of course.

MR. JONES: I think I noticed one clause where it in effect intimated that members of this Association had been guilty. You said in your preamble that a great majority of this Association had rendered patriotic service, intimating that a minority of the Association was doing this thing which the resolution condemns. I think no such intimation should be in the resolution unless we know that members of this Association have actually been guilty, but we should leave the clause there that certain lawyers in this State have been guilty. I do not think that we should intimate that members of this Association are guilty.

MR. CECIL H. SMITH: But suppose they are?

MR. JONES: For that reason I think it should go to a committee, that those little errors may be corrected.

MR. CECIL H. SMITH: I move that the resolution be adopted, together with the amendment of Mr. Paddock, and be referred to the Committee on Grievances—the resolution to include the amendment of Mr. Paddock about releasing men after being inducted into the service.

THE PRESIDENT: Is that an amendment to Major Townes' motion? Major Townes has moved the adoption of the resolution. I understand you second it with this amendment?

MR. SMITH: I move as a substitute for Major Townes' motion that the amendment of Mr. Paddock be embodied in the resolution, and that it be referred to a special committee.

THE PRESIDENT: With authority for the committee to make any changes in the language that are in keeping with the sentiment?

MR. SMITH: Yes.

THE PRESIDENT: Then with your permission that will stand as an amendment by you to Major Townes' motion, accepted by him, so that it will be Major Townes' motion before the house.

MR. SANER: I made a motion some little time ago that we appoint a special committee of five. I do not think that was voted on.

THE PRESIDENT: No; Major Townes came in just at that time. Will that be considered a part of Major Townes' motion, merged with it? Is that the idea?

MR. SANER: The motion I made was that a special committee of five be appointed to consider this matter.

THE PRESIDENT: That motion was made just as Major Townes came in. I do not remember whether it was seconded or not.

MR. LAWTHER: Wouldn't it be proper, in view of the appointment of a committee and the reference of the resolution to a committee, not to adopt the resolution now, but to refer it to a committee, and then when the committee reports, the Association could act on its report?

THE PRESIDENT: If there is a feeling on the part of this body that you are not ready to vote on the sentiment and purport and intent of this motion, that you want that delayed, and want that referred to a special committee for them to consider, then Mr. Saner's motion would be the one you would want to entertain. Mr. Saner's motion is before the house, and if Mr. Saner insists upon it, that motion will be put first. I cannot entertain Mr. Smith's motion as long as Mr. Saner's motion is before the house.

MR. SMITH: I move as a substitute for the whole matter that the resolution proposed by Major Townes, together with the amendment suggested by Mr. Paddock, be adopted by this Association, and that after its adoption it be referred to a committee to embody the amendment in the resolution, preserving the sentiment of the original resolution, and report it back to the Secretary without further action on the part of the convention.

THE PRESIDENT: Does that substitute have a second?  
(Several members seconded the substitute.)

JUDGE GLASS: It seems to me to be rather an awkward proceeding to adopt a resolution before we know what it is. I would be inclined to favor Mr. Saner's motion, with the further

amendment that the resolution offered by Major Townes and the amendment suggested by Mr. Paddock be referred to the committee, to report some time tomorrow. It seems to me it would be better to create the committee and refer the resolution to them, and let us get the resolution in the shape we want to vote on, before we adopt it, or reject it, either.

THE PRESIDENT: That substitute cannot be entertained, because that is the purpose and purport of the original resolution.

JUDGE GLASS: I was not making it as a motion.

MR. DILLARD: With the consent of Mr. Saner and Mr. Smith, I move you that the sentiment of the resolution offered by Mr. Townes be most heartily endorsed by this Association, that the resolution be referred to a special committee in order to be put in proper form, and that that committee be instructed to report back tomorrow morning.

(The motion was seconded.)

THE PRESIDENT: Is that substitute acceptable to all parties? All motions were withdrawn except the motion by Mr. Dillard, which was unanimously adopted.

MR. POLLARD: I move that a copy of the resolution as adopted by this convention be furnished each of the daily papers in the State and published.

The motion was seconded and unanimously adopted.

MR. DABNEY: Two or three gentlemen sitting around here have conferred with me, who think that we ought to go further than the resolution just adopted goes, and that we ought to instruct this committee, in addition to what they have been instructed to do, to draw up a method for the prosecution of the scoundrels and their disqualification—that it furnishes an opportunity to get rid of a great many of us (laughter), and we will be supported by public sentiment. This exists perhaps more numerous than we have appreciated. Shall I make the motion?

THE PRESIDENT: Yes.

MR. DABNEY: Pardon me for speaking to the motion without making it. I, therefore, move that this committee be directed to prepare some method, or bring some resolution before this

body in connection with their other report, in the way of machinery or method to bring about the disbarment of these men.

The motion was seconded.

THE PRESIDENT: As I understand the motion, it is that this committee be also directed to consider and report on the most effective methods that they can devise to prosecute and expel from the profession and disbar members engaging in this practice, and stamp the practice out.

The motion was unanimously adopted.

MR. RICHARD MAYS: Haven't we already got a method provided by law to disbar members?

THE PRESIDENT: I take it the purpose is to find the means and methods by which to put the law into motion, and to get somebody charged with the duty of doing it.

MR. DABNEY: That is the idea. I know it is provided for by law, but unless we get in behind these members by some agency, through our membership in each county, the thing will probably fall flat. Some of these men are very powerful, but if we have this organization and its membership in behind this thing, it will probably result in something effective. That is my idea. It is not to suggest any new legal remedy, but to create a machine to do something.

MR. G. N. HARRISON: The idea, I rise to express, has probably been covered by the remarks just made. Personally, I am not acquainted with the degree of certainty that would enable me to speak in regard to the status of the law applying to this particular matter. It occurred to me that we were in this body doing an ineffectual thing by recommending that machinery be created to disbar, unless the law now makes disbarment a penalty, and it occurred to me that the matter that the committee would best report on would be the recommending of legislation by the State that will put us in a position to apply that remedy. We ourselves have no power to disbar, except from this Association. I assume that no member of this organization is guilty of this matter. The main thing I thought about, in the resolution presented by Major Townes, was that it was not sufficiently drastic—it may have been so framed that it did not express the

author's perfect intent in every respect—to members of the Texas bar at this time engaging in this sort of practice. It is a revelation to me, and I am inclined to think that you will find that the law on our statute books is not sufficient to accomplish the objects suggested by Mr. Dabney at this time. Would not that committee better be requested to consider the suggestion to the Legislature of law or legislation covering the matter, making it sufficient so that these lawyers can be disbarred? I would like to amend the motion by suggesting that they bring in that sort of report.

MR. R. W. RODGERS: As I understand Mr. Dabney, we have already some statutory provisions with reference to disbarment proceedings, and as I catch it, he wants this organization to take into its hands the enforcement of these disbarment statutes in the various counties. Those statutes are lying there practically unused, because it is nobody's business to take them in hand and enforce them as against some offender. As I understand, the suggestion is made that this body, after it adopts this resolution, also pass some kind of a resolution making it the duty of the members of this body, or acting under a committee, perhaps, to see that the statutory provisions are enforced. The Government is going to uncover these gentlemen. They are going to furnish the names of them, and what information they have been able to get, and with that information furnished to this organization, the members of this organization, acting under instructions here, will be authorized, and will not feel like they are volunteers in instituting the proper proceedings in the counties.

MR. MARTIN: I want to make the suggestion that these reports should be brought in separately by this committee, and not have it all in one report, because while I think we will all agree with the substance of what Major Townes has proposed, we might not all agree as to the methods of applying the treatment that we want to apply. So I think these reports should be brought in separately.

MR. DABNEY: I offered mine as an independent motion, not to be mingled with the other at all. I also think we have an abundance of law. I have no idea of suggesting any legal change. It is the enforcement of the law that I have reference to.

THE PRESIDENT: As I understand the purpose of your motion, it is to have this committee investigate as to what can be done, either under the statute or out of the statute, and to arrive at and recommend some effective way to stop the practice and to bring the offenders to punishment.

MR. DABNEY: Yes, sir; and to punish the offenders by disbarment.

MR. LAWTHER: You mean disbarment from the practice?

MR. DABNEY: Yes, sir; disbarment from the practice of the law. I have reference to that solely.

MR. JONES: In view of the statement of Major Townes that the act of Congress is not sufficient to reach these offenders, I think we should embody also some recommendation to Congress to so amend that act that they can be reached not only in Texas, but in every other State.

THE PRESIDENT: If I understand the purport of Mr. Dabney's motion, he wants to cover the whole field, and let this committee report to us what can be done and what steps should be taken.

MR. DABNEY: I have no objection to its being understood that way. What I had in mind particularly was that this Association should effect some sort of organization to bring about the disbarment of past and future offenders. There is plenty of law to disbar a man now for doing these things.

MR. SANER: In that condition, wouldn't it be a better idea to appoint another special committee to deal with the features Mr. Dabney has in view? Our meetings are so short that the two committees could handle the matters to very much better advantage than a central committee.

MR. DABNEY: I accept that suggestion.

THE PRESIDENT: With that substitution I will name this other committee. Before the last motion was made I had in mind for the chairman of the committee Mr. Dillard, who happened to be the mover of the motion. He asks that for reasons personal to himself, other engagements, he be not appointed on that committee, and I, therefore, name as chairman of that committee Mr.

Cecil H. Smith, and as the other members of that committee Judge A. H. Carrigan, J. W. McClendon, A. D. Sanford, and W. B. Paddock. Now the question occurs on Mr. Dabney's motion to appoint a special committee of five to report to this Association the most effective way to accomplish the disbarment of those who have offended, and who may offend, against the spirit of this resolution, and that they embrace in their report any other means to stamp out the practice that they may consider worth the attention of this Association.

The motion was unanimously carried, and the President appointed Mr. S. B. Dabney, chairman, and Mr. Dayton Moses, Mr. H. P. Lawther, Mr. R. W. Rodgers, and Mr. P. A. Martin, as members of the committee authorized by said motion.

MR. PADDOCK: In view of the crowded condition of the docket and the early adjournment of the Association, and in view of the great public necessity that exists, I move that the reports of these committees in the order named shall be made a special order, immediately on convening tomorrow afternoon.

The motion was seconded and unanimously carried.

The convention thereupon adjourned until 10 o'clock a. m., July 4, 1918.

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#### MORNING SESSION—JULY 4, 1918.

THE PRESIDENT: You will come to order. Mr. Estes, have you a further report?

MR. ESTES: Yes, sir. I want to add the names of Judge T. B. Greenwood, Mr. Bernard Martin, of Wichita Falls, and Mr. A. F. Moss, of Memphis, to the list of new members proposed, and move their election.

The motion was duly seconded and unanimously adopted, and the gentlemen named were declared members of the Association.

THE PRESIDENT: Gentlemen of the Association, and Ladies: One hundred and forty-two years ago today, in the language of one of our great Presidents, our forefathers brought forth upon this continent a nation conceived in liberty, and committed to the proposition that all men are born free and equal. Also, in a paraphrase of his language, we are today engaged in a great

war, the greatest the world has ever seen, to determine whether a government so founded, its principles so enunciated and declared for, may continue on the earth. It is eminently fitting, therefore, that on the opening of this convention on the Fourth day of July, we should hear a word from another great War President on this great question, and on what the Fourth of July means to us, to the American people, and to the world. Judge Dillard, of Sherman, will read to you by request a brief address of our great President on this great occasion. (Applause.)

MR. F. C. DILLARD: Mr. President, Members of the Association, Ladies and Gentlemen: This message is one which is sent out and requested to be read everywhere by Four Minute Men on this day. It is called the "Four Minute Message from President Wilson." It is more than that. It is a heart message from him upon whom is laid, more than on any other, the burden of this world conflict. It is a heart message from him to the hearts of all, everywhere in this land, who are ready with service, with sacrifice, to so act, to so live, to so yield, to so suffer, to so struggle, that autocratic government may perish from the earth forever (applause), and that the earth shall become a place where peoples everywhere, great and small, shall live in peace, freedom and happiness. The message the President sends to us is this:

FOUR MINUTE MESSAGE FROM PRESIDENT WILSON.

"You are met, my fellow citizens, to commemorate the signing of that Declaration of Independence which marked the awakening of a new spirit in the lives of nations. Since the birth of our republic, we have seen this spirit grow. We have heard the demand and watched the struggle for self-government spread and triumph among many peoples. We have come to regard the right to political liberty as the common right of humankind. Year after year, within the security of our borders, we have continued to rejoice in the peaceful increase of freedom and democracy throughout the world. And yet now, suddenly, we are confronted with a menace which endangers everything that we have won and everything that the world has won.

"In all its old insolence, with all its ancient cruelty and injustice, military autocracy has again armed itself against the pacific hopes of men. Having suppressed self-government among



its own people by an organization maintained in part by falsehood and treachery, it has set out to impose its will upon its neighbors and upon us. One by one, it has compelled every civilized nation in the world either to forego its aspirations or to declare war in their defense. We find ourselves fighting again for our national existence. We are face to face with the necessity of asserting anew the fundamental right of free men to make their own laws and choose their own allegiance, or else permit humanity to become the victim of a ruthless ambition that is determined to destroy what it can not master.

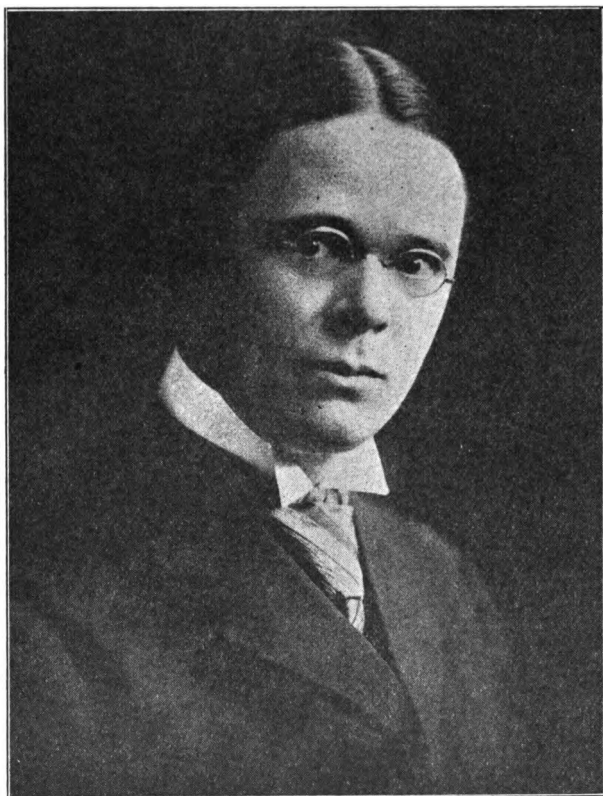
“Against its threat the liberty-loving people of the world have risen and allied themselves. No fear has deterred them, and no bribe of material well-being has held them back. They have made sacrifices such as the world has never known before, and their resistance in the face of death and suffering has proved that the aim which animates the German effort can never hope to rule the spirit of mankind. Against the horror of military conquest, against the emptiness of living in mere bodily contentment, against the desolation of becoming part of a State that knows neither truth nor honor, the world has so revolted that even people long dominated and suppressed by force have now begun to stir and arm themselves.

“Centuries of subjugation have not destroyed the racial aspirations of the many distinct peoples of eastern Europe, nor have they accepted the sordid ideals of their political and military masters. They have survived the slow persecutions of peace as well as the agonies of war, and now demand recognition for their just claims to autonomy and self-government. Representatives of these races are with you today, voicing their loyalty to our ideals and offering their services in the common cause. I ask you, fellow citizens, to unite with them in making this our Independence Day the first that shall be consecrated to a declaration of independence for all the peoples of the world.

“WOODROW WILSON.”

THE PRESIDENT: Before the war engrossed practically all of our attention there was no question under public discussion second in importance or in public interest to the slow process of our courts, the delays of justice, the inability of the litigant to get his cause heard and determined. A rapidly growing state, out-





**DR. ROSCOE POUND**

growing the governmental forms that it had adopted, with rapidly evolving conditions, but a people so actively engaged in the development of industry and commerce and hidden wealth that time seemed to forbid giving that careful attention that was necessary to work out a proper and satisfactory solution of the great question, we have gone on from day to day and from year to year, adopting temporary makeshifts to relieve the situation, and postponing the day of a careful consideration of the reform of our whole judicial system that every one who studies the matter appreciates must come sooner or later. The Texas Bar Association has been criticised time and again because it has never done anything affirmatively, positively, and on comprehensive lines to aid the situation. Acting by the direction of the Association at the last session, the Board of Directors have laid out a plan to take up this great question comprehensively, and to that end they have been fortunate in securing, to lay the matter broadly before us, a man who is regarded today in this country as the greatest exponent of the best thought of the best lawyers and the best students of this great subject in our nation. (Applause.) That one should come to us as the dean of the Harvard Law School is sufficient in itself to draw and hold our attention, but when he comes to us as the one man who has made the greatest impression upon the American Bar Association on this great subject, and whose addresses and writings upon the subject have attracted more attention than those of any other one man who has considered the matter, when he comes to us, in the language of a great St. Louis lawyer, Judge Lehman, as the most profound lawyer and student of law and judicial procedure in the American Union, we are indeed fortunate, and it is indeed a pleasure to me to be able to introduce to you Dr. Roscoe Pound, of Harvard University, who will address you. (Applause.)

### JUDICIAL ORGANIZATION.

AN ADDRESS BY DR. ROSCOE POUND, DEAN OF THE HARVARD  
LAW SCHOOL.

*Mr. President, Ladies and Gentlemen:*

When I have to sit quietly and be introduced by a presiding officer in his best florid-Gothic style of introductory oratory, I

think of a story which I heard at a dinner of the South Carolina Bar Association some years ago. The president of the association told us that the night before his negro butler had applied for a night off, because, he said he wanted to go to the lodge. His master said to him: "Why, Sam, you don't need to go to the lodge. Can't they run the lodge without you?" He says: "Massa John, dey cain't run de lodge without Sam. Dey cain't get along without Sam." The president says: "How is that, Sam? Are you the master?" "Oh, no, Massa John. I isn't de master, I is only de supreme king. There is several above me yet." (Laughter.)

I am afraid that I came down here contemplating a great crime—not connected in anywise with your excise laws. (Laughter.) But, instead of bringing in my grip something liable to seizure as I went through Oklahoma, I brought a manuscript crammed with statistics, and with what appeared to me to be logical arguments and carefully worked out propositions, but which I believe it would be nothing short of a crime for me to read to you this morning. So I am going to ask "leave to print" in your "Proceedings," and if the stenographer will be good enough not to take down these remarks that I am going to make, so that I cannot be embarrassed by them if in the heat of my argument I go further than I want to go in print, I will guarantee to deliver to him a carefully written transcript of exactly what I said (laughter)—at least, for the purpose of print. (Laughter.)

I remember that I had been admitted to the bar just six days, and was as ignorant of practice as only the product of a modern law school could be (laughter) when I was directed in the office in which I was trying to hold down a desk, to go to a country county-seat some twenty miles down the road and take a default. I had a sort of a notion of what a default was, and I looked at the books on practice and the code of civil procedure pretty carefully, without getting much light on what I was to do, but that default had to be taken, and I went down on the train, determined to take it or perish in the attempt. (Laughter.) When I got down there I found that a local congregation of what in that part of the world are called Exodusters had just built a meeting-house. The Exodusters were an assembly of

colored persons, who found it necessary to engage in an exodus from the South at the time of the Kuklux (laughter), and having shaken the dust of their native heath from their heels they were called Exodusters. (Laughter.) Of course, it was not possible to dedicate this meeting-house without a speech, and as a lawyer is always ready to make a speech, under all circumstances, at any time, at any place, on any subject, whether he has anything to say about it or not, naturally the colored brethren turned to the bar for speech-making. They appealed to the presiding justice of the district to delegate two members of the bar to speak. I need not tell those of you who are members of the profession that by immemorial custom it is the duty and the prerogative of the junior member of the bar to officiate on all occasions which involve glory, but no pay. (Laughter.) This occasion being of a glorious, but not of a remunerative, character, I and a colleague of equal standing (laughter) were chosen to perform. My colleague discovered he had urgent business at home, and took a freight train back, but I had not taken the default, and I did not feel justified in deserting. So, after having explained to the presiding justice the serious errand which had brought me there, and having received the assurance that it would be looked after in my absence, I accompanied the colored clergyman to the "edifice," as he called it. I explained to him very carefully on the way there that I had nothing to say, and that whatever I did say would have to be strictly off-hand, and he was good enough to say that he would explain that—and he did. (Laughter.) He said to the congregation, at the proper point in the proceedings: "Brethren and Sistern: Through the courtesy of the presiding justice of this circuit, we is honored this morning by the presence of the Honorable Roscoe Pound, of Lincoln, who has kindly consented to deliver to us some promiscuous and edificationary remarks of a strictly extemporaneous character." (Laughter.) Now I want to follow that earliest precedent of my professional career by speaking again this morning in a promiscuous and extemporaneous manner, instead of reading you the manuscript which I had prepared.

In 1915 one Arlidge, a litigious Briton of the good old type that made the common law, was the owner of a building in the

borough of Hampstead, which was used for a dwelling, and was let as a dwelling house. The English "Housing of the Poor" act of 1906 provides that if, at any time, the local council conceive that a building let as a dwelling is unfit for human habitation, they may make what the statute calls a "closing order," and on posting a copy of that closing order on the door of the house may make it unlawful for the owner of that building to let it as a dwelling. Arlidge had had trouble with the local council of Hampstead for years—he being a conservative landlord, and they being radical politicians. (Laughter.) Naturally, therefore, Arlidge was not surprised one morning, when he came to this house with a prospective tenant, to see a closing order posted upon it. Having failed in persistent attempt to prove vacation of this order, he took an appeal to the Local Government Board, as allowed by the statute. In due course the Board sent its inspector to the locality and the latter made an inspection and submitted a confidential report. Arlidge sought in vain to see the report or to learn its contents and applied in vain to be heard before the Board that was to decide his appeal. Without hearing him, without informing him of the case against him as set forth by the inspector, acting upon the basis of a secret report, which he was given no opportunity to explain or refute, the Board rejected the appeal. But, being a litigious Briton of the type who had been taught to believe, in the language of Lord Coke, that no wrong could happen to any person in his life, liberty, property, fortune or inheritance, and that no misdemeanor, judicial or extra-judicial, could occur, but that it should be remedied by due course of justice in one or the other of the King's courts of law—knowing this, I say, or learning it easily from his lawyer, Arlidge applied to the King's Bench Division for a writ of certiorari. King's Bench Division granted it. The Court of Appeals affirmed it, on the ground that when Parliament had said that a man should have a right to appeal to this board for the rescinding of its orders, it meant that he should be accorded a judicial hearing, and that it did not mean that a group of politicians could sit around a table, and, upon a report made to them privately and secretly by an inspector, deprive a man of the use of his property. But the Local Government Board was not satisfied and

took an appeal to the House of Lords, which, in 1915, reversed this decision—a decision which I undertake to say fifty years ago would have been rendered by any common law court in the world, a decision which the fourteenth amendment would compel an American state court to render, and the fifth amendment would compel the Federal court to render—the House of Lords reversed that decision, and held that when Parliament set up an administrative tribunal of this kind, if this administrative tribunal had a certain procedure which it applied to all persons alike, Aldridge could not complain, if he got from it the same treatment that every one else got.

But let us notice that what Arlidge got was not justice according to law. It was the justice without law of primitive society. Kipling tells us in one of his stories of the Ameer of Afghanistan administering justice; how earlier in the day, when the Commander of the Faithful is in good spirits, things go merrily, and later in the day, when he is bored with the work of the forum, things go somewhat more hurriedly; how the same plainness and frankness of speech which may please the Commander of the Faithful from one litigant may bring an over-impertunate imitator presently to the edge of the blade. The justice which I say the Local Government Board administered to Arlidge was justice without law, but it is that type of justice which has been steadily going forward in all English-speaking countries for at least a decade.

According to Mr. Dooley, when Hogan went to the front with his regiment in the war of 1898, Father Kelly advised him something like this: "Hogan, me man, you will go into the battle with a prayer book in one hand and a sword in the other, but when it comes to a place where there is nade of two hands, it is not the sword you will be after dropping." (Laughter.) We can well understand then how Uncle Sam, going into battle with a law book in one hand and a sword in the other, may, in an emergency that calls for two hands, be found taking the sword in both. And so what I am going to say for a few minutes about this growth of executive justice, of justice without law, has no reference at all to the inevitable, the necessary, growth of administration in time of war. It is said that during the civil war, when complaint was made to President Lincoln



about the great development of these rough and ready methods, he said, that did not trouble him at all; that because a sick man took calomel in large quantities it did not prove that calomel would become his regular diet in time of health. (Laughter.) And so I do not conceive that with things running normally there would be any great danger that any English-speaking people would permanently swing to oriental justice. But the point which I want to make is that long before the war this movement, this trend, had assumed large proportions, and that justice after the manner of the Arabian Nights was becoming a rather ordinary feature of our polity.

Let me give you an example. In 1914 a workman employed upon the wagons of the Knickerbocker Ice Company in New York City came home one evening in a condition very much the worse for wear. He was shaky, nervous and pale. He had no appetite for his supper. When his wife asked him what was the matter, he said that in unloading ice into a certain cellar a large block of ice had fallen upon him and shaken him up severely. She sent for a doctor, to whom he told the same story. The doctor looked him over and shrugged his shoulders, and sent him to a hospital, where he died at one o'clock that morning of delirium tremens. Thereupon the widow brought a proceeding before the Workmen's Compensation Commission for compensation because of the injuries received by him in the course of his work, which had resulted in his death. The testimony of those who had been at work with him on the wagon that day showed that during the day he had been busy neither upon the ice wagon nor the water wagon (laughter), but had spent his time not in putting ice into the cellar of this place of business, but on the interior of the building laying the foundation for the fatal attack that took him off that night. The statute, however, which set up this commission, provided that it should not be governed by the technical rules of evidence; and the tribunal conceived it to be a highly technical rule that an applicant for compensation should be required to show that the injury occurred in the course of his employment, and as it was permitted to receive the hearsay statement of the wife and the doctor, although it appeared that there was not a bruise upon his person—which you would think would have been not unlikely to have been caused by a three

hundred pound block of ice falling upon him—and although the evidence showed that he had never been near the wagon during the day, the tribunal awarded compensation, and it took a divided court in the New York Court of Appeals to set aside that award. Moreover great complaint has been made of the disposition of that case by many zealous advocates of the “free, equal, and exact justice.” Such justice is not unpopular, as we know, among the lay public. It seems in a sort of way to equalize the distribution of the economic surplus (laughter); and if the economic surplus is to be distributed by adjudication, Haroun-al-Rashid, Baldwin the Hatchet and the Ameer of Afghanistan are exactly the people to do it, for let us remember that among all these examples of rough personal justice the only two that stand out as having some system and order and regularity in them are the personal justice of Henry the Second of England and Louis the Ninth of France, and Henry the Second was by instinct a lawyer, the Louis the Ninth was a saint.

Why is it that among a people trained to believe in a government of laws and not of men we have this great development of executive justice, of administrative justice, of justice without law? Let us remember it is only a generation ago that we were said to be a law-ridden people. A generation ago almost every measure of police or of administration encountered an injunction. A generation ago we were proud of our doctrine of judicial power over legislation. A generation ago legislatures could be found giving executive functions to courts, and many a statute had to be held unconstitutional for violation of our constitutional separation of powers. Less than a generation ago the Supreme Court of one of our States committed the adjustment of difficulties over railway crossings to courts of equity. A generation ago it was fashionable to commit the enforcement of prohibitory laws to courts of equity. It is not so long ago that the powers of our courts of equity were extended to embrace the enforcement of anti-trust laws. It is not so long ago that the hands of the administrative authorities were systematically tied down by common law liability and judicial review. Where some peoples went to one extreme and were bureau-ridden, we seemed to go to the other extreme and be court-ridden. We had achieved in very truth a government of laws and not of men.

But a reaction has set in. Within a generation the venue of litigation over private water rights in the Western States has been taken from courts and given to state boards of engineers and state boards of control. The workmen's compensation act has taken a great mass of litigation out of the courts and committed it to administrative tribunals. Even in criminal law, which we think of as par excellence the domain of the common law, juvenile courts, parole and probation commissions, and the attempt to individualize the treatment of offenders, and the attempts of medical offenders to take questions of medical opinion out of the forum and commit them to some sort of medical referee—all these things are making great inroads upon the administration of justice by judicial tribunals, and committing more and more the adjustment of the relations of the individual with his fellows to executive boards and commissions.

Chief, of course, among these executive tribunals are our public service commissions, and the reaction has perhaps gone the farthest here. In many jurisdictions these commissions are not bound by the legal rules of evidence. In many jurisdictions their findings of fact are not subject to review, and it has been a serious question in the courts of some states whether they had a right even to review the question whether there was any evidence at all to sustain a finding. Some states have been so fearful that the courts would review the proceedings of these executive tribunals that they have expressly provided that the reviewing court could do no more than pass upon bare legal question certified to it by the commission. Where a generation ago we confided to our courts almost the details of administration, and the whole conduct of public and individual affairs was subject to judicial scrutiny, today it would seem as if we were willing to take away everything but a fifteen dollar replevin suit over a cow from our courts of justice.

This is nothing new in legal history, and if we look back at the history of our legal system we can see some of the reasons for it. In the sixteenth century English lawyers are found complaining of the same thing. They are found complaining that scarcely any business of importance came to the king's courts at law. In the reign of Queen Mary a sergeant at law said that it was no wonder that the king's justices took three or four

years to decide a case, because if they did not, they would have nothing to do in their courts but to look about them. That was an era of executive tribunals. The king's council, the court of requests, the court of chancery, the star chamber, all of these were executive tribunals, with a Romanized and a summary procedure; and they were tribunals which proceeded very largely along these oriental lines of justice without law. Equity began in just that sort of thing. The old bills in equity appealed to the chancellor, not on a legal point or as a matter of right, but as a matter of "alms and charity." The complainant told the court that he was an old soldier, injured in the wars in France, or that he was a servant of the Duchess of Clarence, who had rendered notable service in the king's household, and on that ground he sought relief which he could not get from the king's justices. It was not until a century later, when lawyers began to sit upon the woolsack, that equity became the refined legal system with which we are acquainted today. In other words, there was in that period a reversion from legal justice, administered in the king's courts of common law, to executive or administrative justice—justice without law, administered in executive tribunals—and the reason I think was much the same as the reason for the movement of which I have just spoken.

Let us remember that after the Reformation, in the great expansion of commerce and industry and development of wealth, and movement for colonization that went on in England, the king's courts were deciding cases with the judicial machinery of the reign of Edward the First. They were deciding cases on the basis of a feudal property law, which sprang up to meet the conditions of the thirteenth and fourteenth centuries, and the English courts after the Reformation, struggling to administer justice to sixteenth and seventeenth century England with the judiciary machinery of Edward the First and with a feudal property law, are exactly comparable to the courts of America of the twentieth century, struggling to administer justice to the crowded, urban, industrial, heterogeneous population of twentieth century America on the basis of the judicial organization devised after the Revolution for the homogeneous rural, pioneer, agricultural community of that time. (Applause.)

If that is so, we see something of what will happen to this

executive justice. The executive justice of the court of chancery and the star chamber was gradually put down, and the star chamber left its mark in our common law only in the law of misdemeanors, which is now as technical as the free and easy justice of the star chamber was oriental. The rough and ready justice of the chancellor was turned into our refined system of equity, and the rough and ready summary tribunals of sixteenth century England have left no mark except in the liberalizing and modernizing of the law of the centuries that came after.

And so I say today, if we make the machinery of the judicial administration of justice adequate to its tasks, we need have no fear that this rule of oriental justice will go very far. The onward march of executive justice will cease the moment we put judicial justice in a position to compete with it; for no man and no set of men can long be entrusted safely with the royal prerogative of administering justice without law. It is only a saint like King Louis who can be expected to achieve justice in that way, and canonizations have not been frequent in recent centuries.

When we come to look immediately at American judicial organization, we see that three factors have entered into it. The first of these factors was the organization of the English courts at the time of the Revolution. The second of these factors was the need for rapidly working out a common law for America on the basis of the somewhat stagnant English legal tradition of the end of the eighteenth century. The third of these factors was the need of decentralization in a period of long distances and expensive travel and sparse population in the pioneer rural communities of post-Revolutionary America.

Now let us look just a moment at each of these. We must remember, in the first place, that the history of American law begins not in the colonies, but after the Revolution. For the most part, the law administered prior to the Revolution in colonial America was anything but well-defined. The justice of colonial America was executive and legislative. The legislature granted new trials in New Hampshire down to 1804, and in Rhode Island down to 1837, and you can imagine what a profound body of legal principles governed the trial lawyer under those circumstances. (Laughter.) The legislature granted di-

voices in Pennsylvania down to 1874 and in Alabama to the '80's. The remnants of legislative justice died slowly. Executive justice died slowly. The mayor of New York City held the city court down to the constitution of 1825 in that state, and the highest court of review in New York down to 1846 was the senate. It is well known among lawyers that many of our best common law authorities are decisions of the great judges of the Supreme Court of New York in the period down to 1846, which were reversed by the senate on error or appeal. (Laughter.) In the colonial period the tribunals were either executive or legislative, as I have said; or if there were courts of justice they were manned chiefly by laymen. A blacksmith was justice of the highest court of Rhode Island until 1818, and the Chief Justice from 1819 to 1826 was a farmer. It is not strange that none of the decisions of that court began to be reported until 1828. Nobody was interested in the decisions of Charles Brayton or Isaac Willbourn.

So it was not until after the Revolution, when permanent judicial tribunals, manned by lawyers, were set up, that we began to get the law with which we are familiar as the Anglo-American common law, and our judicial institutions were formative in that period. The model, of course, was the English judicial organization of the eighteenth century; but that judicial organization had remained, with the exception of the addition of the court of chancery, substantially unaltered since the days of Edward the First, and in particular it involved the primitive characteristic which marks all archaic legal institutions—complexity rather than simplicity, multiplication rather than unification. Let us remember that in legal history the special always comes before the general. We get a rule for each case before we begin to get principles running all cases. We get special writs for each case before we begin to get classes of actions for classes of cases. We get an unrelated series of independent rules before we begin to get a logical legal system. And so it is in the matter of courts of justice in the primitive community. When a new set of cases arises the rule is to set up a new court. At Rome, when the litigation of the foreigner began to be important, and it was necessary to do something for him, the Romans did not admit the foreigner to their regular courts, but

they set up a new court especially for foreigners. When in the reign of Augustus testamentary trusts began to be important, the ordinary courts were not given jurisdiction of testamentary trusts, but a new court was set up that could deal with testamentary trusts and nothing else. And so it is always. In the beginning of legal development in the Anglo-Saxon law a man who wanted justice according to his means went to the hundred, or the shire, or the gemot, the king's council of wise men, or the king himself. He could get the cheap justice of his fellows in the hundred, or the expensive justice of the king, according to his means. Before Edward the First broke up the private jurisdiction of feudal lords, the English litigant could go to the county court, he could go to the king's superior courts of common law, where there were three courts of almost concurrent jurisdiction, he could go to the itinerant justices, he could go to the king's council, or even to the king in person, for extraordinary relief.

When Lord Coke wrote his fourth Institute on the organization of courts in the seventeenth century, he enumerated seventy-four courts in England, and seventeen of those seventy-four did the work which is now done in England by three—the county court, the supreme court of judicature, and the House of Lords. In 1873, when England overhauled her judicial system in the Judicature Act, thirteen tribunals, eight of them courts of first instance, and five of them appellate courts, were united in the single Supreme Court of Judicature. Then I say to you our complexity of judicial organization in this country is due primarily to our taking for our model the archaic English judicial organization as it existed at the end of the eighteenth century.

But two other factors entered into this matter. Another factor was the need of some machine for determining the law. Men had become dreadfully impatient under the crude administration of justice by executive and administrative and legislative bodies, and by courts not named by lawyers, prior to and during the Revolution. They called for certainty. In the colonial community there was not much needed but to keep the peace. Men were not brought together much in crowds. They lived apart on their farms and homesteads. The points of contact between man and man that gave rise to litigation were not numerous. But

with the development of commerce and industry and the complex society after the Revolution, it was necessary to have order and system and certainty in the administration of justice. And so the prime need of the time was to make over, rather rapidly, the common law tradition brought from England into a common law of America. Our judicial hierarchy was very largely set up with this end in view. As a lawyer has put it: "John Doe must suffer for the commonwealth's sake." It was less important that John Doe get a speedy and exact justice than that John Doe's case be made to serve as a vehicle for bringing certainty and order and logic into the administration of justice. A writer describing the situation during that period tells us an apocryphal story of Herodotus about a certain land of the Egyptians, where there was a great highway that all the public used in their goings and comings to and fro, and when a hole would appear a posse comitatus would come together with picks and shovels and fill up that hole; and it was their proud boast that no two wayfarers ever fell into the same hole. Now, it was a situation of that sort with which our judicial system was organized to deal. Litigation was somewhat of an amusement to our forefathers. They were not so much concerned to get a speedy result, as to have a good run for their money, and the commonwealth was glad to have them run for it, if that would settle the law for the future.

Then a third element, and not the least, in producing our system of judicial organization in this country, was the need of decentralization. In those days of bad roads, long distances and sparsely settled communities, in the days of travel by horseback or by stage coach, with magnificent distances and travel expensive, it was a vital need to bring justice to every man's back door, and the back doors were not so numerous in those days but what a few justices could succeed in doing it. Some of our commonwealths have not yet got away from the peripatetic supreme courts of those days. In the commonwealth where I now live, although every case that is actually argued is argued at Boston, the supreme court makes a solemn parade about over the state, because it was required to do so in the old days, when it was not convenient to bring the whole bar of a community to Boston on horseback. (Laughter.) You fortunately have been



delivered from that in this empire of yours, because I fancy the horse has not yet been invented that would transport the bar in that way.

Those then were the factors that operated immediately to determine our American judicial organization. Now, what was this English model that we proceeded on? At the bottom were the local peace magistrates with petty jurisdiction; next were the king's bench, common pleas and exchequer, with a concurrent jurisdiction; next was a central court of equity. Then there were ecclesiastical courts, with a probate and divorce jurisdiction. Then by way of appellate jurisdiction the king's bench reviewed the common pleas, the exchequer chamber reviewed the exchequer, the king's bench and the common pleas, and the House of Lords reviewed everything. That, of course, was too archaic to be followed exactly in this country. Yet we did follow its main lines. If you look at the main lines of that organization, you will see we have at the bottom a set of local and petty magistrates' courts, manned by laymen. Then we have the superior courts of law, a central tribunal of jurisdiction at law, where cases are heard at the circuit, but reviewed in the court in banc. Then we have a central court of equity, in which testimony is taken in the locality, but causes are heard at Westminster. Then a set of probate courts in the different ecclesiastical subdivisions of the kingdom, and then finally an intermediate tribunal in the exchequer chamber, and above all the ultimate appellate tribunal, the House of Lords.

And now, when you come to look at American judicial organization, you will see with a slight modification it follows those lines exactly. The modification came, as near as I have been able to make out, from the French judicial organization. Things French were very popular in America after the Revolution, and things English were at a bit of a discount. The English common law had hard work to survive the odium that attached to things English after the Revolution, and if our fathers had only been able to read French law books, I do not know what might have happened. But, fortunately or unfortunately, as the case may be, they could not read French, and cases had to be decided in one way or another, and the English books had their effect, and it was only in a few things, therefore, that these French

things left a permanent mark. One of them was in judicial organization. The French judicial organization has a local civil tribunal and local criminal tribunal of first instance in every locality; then certain districts with district courts of appeal, and then an ultimate appellate tribunal, the Court of Cassation at Paris. Now, the Federal judicial act of 1789 followed that model to a certain extent, in the supreme court, the circuit court and the district court; and the New York reorganization of 1847 also followed that to some extent, so that we have in the newer jurisdictions in the country, which have followed the Federal judiciary act and the New York reorganization, a grafting of this French conception upon the common law idea of organization of courts.

It may be worth while, just a moment, to draw a sort of composite photograph of American judicial organization. I do not attempt to state the judicial organization of any particular commonwealth, but to suggest to you the impression I have derived from studying somewhat particularly some forty-eight different judicial organizations, and endeavoring to get the principal lines upon which they have been developed. If we start at the bottom, we find local magistrates' courts, manned usually by laymen, tribunals in which we have no confidence, so that we insist on review and trial de novo of the cases in which their judgments have been pronounced, in our next grade of tribunal, our superior courts of first instance. Next comes a set of superior courts of first instance, organized usually in districts; organized usually in this country by and large in a pretty hard and fast way, so that the judge in a particular district often cannot sit anywhere else, or if he can sit anywhere else, it is only by exchange, or by being called in specially. Even where they have adopted provisions whereby judges of these districts can sit elsewhere, it is no one's business to make them, and consequently, in many parts of the country we have a situation where in one district the courts are hopelessly in arrears, and in another the court is getting along very comfortably, with a considerable margin of leisure. It is no one's business to attend to such a situation, even in jurisdictions where it is possible to do so. Then next we have in some of our jurisdictions a separate court of chancery, but usually the chancery jurisdiction is confided

to this court of first instance that I have spoken of. We see, then, that in general our superior court of first instance has a general common law, equity and criminal jurisdiction. Then very commonly over that we put a set of intermediate appellate courts. That has become pretty common in this country. In New York, the appellate division; in Pennsylvania, the superior court; in Indiana, the court of appeals; in Illinois, the appellate courts; in Georgia and in Alabama, the court of appeals; the courts of appeal with which you are familiar here; the district court of appeals in California—all those tribunals are modeled in general on the Federal intermediate appellate jurisdiction.

Now, you may say: "In an empire such as we have here, how are we going to get along without that?" Well, I expect it would be much easier than we think. Let us remember that that intermediate review is an excrescence on the common law. It is not a common law idea at all. At common law the normal mode of review was after a trial at circuit to go to the court in banc, with a motion in arrest of judgment, or a motion for a new trial; and what did the work that is done by these intermediate appellate tribunals was a motion for a new trial, not before the judge at circuit, but before the four justices of one of the superior courts in banc. This intermediate appellate stage ought to be made, and could be made, as it was at common law, as simple as a motion for a new trial. We all of us know that, the country through and by and large, a motion for a new trial addressed to the judge before whom the case was tried, is pretty perfunctory. The original common law proceeding for a new trial has become our intermediate appeal; but unhappily we took the analogy of error to parliament in our tribunals in this country, and not, as we should have done, the analogy of a motion for a new trial, or a motion in arrest, or motion for judgment non obstante before the court in banc.

Now, on top of all of this we have our ultimate appellate tribunals, modeled in general, of course, on the exchequer chamber, but with a good deal of the procedure and many of the jurisdictional incidents of appellate jurisdiction proper. The difficulty with that organization is that it wastes judicial power. Generally these judges can only sit in the tribunals for which they are elected, or appointed or commissioned; and

it may very easily happen that one tribunal may be crowded with business, and another have relatively little business, but there is no one whose duty it is to put his hand to the machine and direct the judicial power of the commonwealth to the place where the work remains to be done.

It happened in one of our commonwealths recently, where the public are all investors, and judges might properly, therefore, have been in this predicament, that in an important controversy involving the charter of a corporation, out of seven justices, four were stockholders in the corporation, and disqualified. There was no machinery in that commonwealth for putting anyone on the bench of the highest court of the state to settle that difficulty. The parties ultimately compromised as the only way out of a ridiculous situation. Now, that could not have happened in England. In England, since 1873, it would have been the duty of the Lord Chancellor under those circumstances to take three men from their judicial force, or four men, if need be, and put them where there was work to be done. There is nothing in the way of a judicial superintendent of our judicial machine to cope with a situation of that kind. I do not need to discuss the obvious to an American bar association. We all have experienced the workings of this machine of ours. We all know that in every large city of the country, our dockets are hopelessly in arrears, and we can hardly credit it when we read in the reports that they complain bitterly in England because it takes sometimes as long as twelve months to go from the county court at the bottom to the House of Lords at the top, when a little while ago it only took nine months—and why these extra three months? I do not believe there is a commonwealth in this country that would not be grateful if they could go, not from the bottom, but from our superior court of first instance, to the ultimate tribunal and get a final decision in that same twelve months.

Now, mark you, it is not because they have more judges in England; because they have fewer. The municipal court of Chicago has twenty-eight judges, doing a business in judgments of \$5,000,000.00 a year, disposing on the average of 200,000 cases in a year. It is not the number of justices. It is not the number of judges. For example, England, to do the whole legal business of that island, including the work that is done in

one of our commonwealths by our State and Federal courts, including admiralty and bankruptcy, and to do the appellate work of the whole British Empire, has a staff of judges not as large as the commonwealth of Massachusetts. It is not that they have got more judges. They have got fewer. It is not entirely that they have got better ones, although they do succeed in putting their very best legal talent upon the bench. More than anything else it is because in 1873 they overhauled this complicated machine and took steps to make it possible to utilize the judges whom they put upon the bench to the best advantage.

In 1873 Lord Selborne in preparing the Judicature Act of that year conceived the idea of unifying the judicial system. His plan, unhappily, was not carried out. An archaic circuit system was left untouched. The recommendation as to county courts was not adopted, and the conservatives, with their traditional respect for the House of Lords, refused to cut off the jurisdiction of the House of Lords. But although Lord Selborne's scheme was mutilated in that way, his consolidation of thirteen courts into one Supreme Court of Judicature absolutely revolutionized the administration of justice in England. Such a thing as *Jarndyce vs. Jarndyce* has been impossible in England since 1873.

We cannot expect in this country to adopt the judicial organization of England or any other country off-hand, and I think it would be a great mistake for one of our commonwealths to adopt word for word the judicial system of any other. It is quite ridiculous to expect that Rhode Island, with the area of one of your counties, and the population of an empire, should have a judicial organization like a commonwealth such as Texas, with the area of an empire and the problems of an empire but not exactly yet an imperial population. So these are matters to study with respect to each locality, and the problems of that locality, and what I want to impress upon you is rather the principle than any particular detail. That principle is to organize the personnel of the judicial department, to organize the business of the judicial department, both its judicial business and its administrative business, so that the whole judicial power of the commonwealth can be directed where there is busi-

ness, to the dispatch of that business. Those three things are of importance—organization of the personnel, organization of the judicial business, organization of the administrative business. There ought to be a great functionary, who is charged with responsibility for the work of this machine, and he ought to have, either himself or along with some committee of judges, a power coincident with that responsibility.

Let us see how that works. In England the Lord Chancellor is a political officer. He comes and goes with the ministry. He is responsible to Parliament. When Lord Loreburn, who was a great lawyer, but a poor administrator, lost his grip on the machine, things began to get in arrears. He was more interested in the fine points of equity than in the grist that was coming from his mill. There was such an outcry in Parliament that Lord Loreburn retired and Lord Haldane, a veteran administrator, took hold of the machine, and justice moved forward. Now, I say there ought to be a responsible head of the organization, charged with the duty of making it work, and responsibility to the people that it does work. The divided responsibility of our system of electing judges for localities is no responsibility. Nobody is responsible. Where everyone is responsible, no one is responsible.

And then, in just a moment more, because I have already taken a great deal of time, let me say something about organizing the administrative work of the court. Let us think of a bit of history here. The clerkships of the courts were the perquisites of the medieval judges. The judges were paid by fees, as our justices of the peace generally are still, and a suspicion grew up in time that that was not altogether wholesome for the administration of justice. I do not know what your traditions are here, but in the domain I came from the initials J. P. were popularly taken to represent "Judgment for plaintiff," because the plaintiff was wise enough to select for a defendant a party who could pay the costs. (Laughter.) Now, something of that same idea operated to change the system of remuneration of the king's justices; but the king's justices continued to appoint their relatives to be clerks, and the relatives were much more interested in the emoluments of those offices, than in the way in which they performed their duties. We brought that vicious

system to this country. I can well remember in the community where I used to practice that the clerk of the courts in the larger counties of the state received four and five or six times the compensation of the judge who appointed him, and finally, those positions became so valuable that it was not considered expedient to let the judge appoint him, and they were elected. It is true, I suppose, in the majority of our jurisdictions, that the clerks and administrative officers of our courts are absolutely independent. Each clerk's office is a little kingdom by itself. It is nobody's business to improve the administrative part of our judicial machinery. It is nobody's business to reflect on the expense. Statistics now show that about 30 per cent of the cost of administering justice goes into forms that are of no earthly utility; that the administrative part of our judicial determination of justice, costs more than the judicial part. The municipal court of Chicago was recently confronted with a condition and not a theory. The city needed money for other things besides administering justice. The courts had to spend less money. What could be done? It was discovered it cost \$200,000.00 a year in that court to write out an elaborate common law judgment in each case. That form comes down from the time when the clerk's compensation was a penny for every ten words, and he had many formulas that could use up ten words—to-wit, in the manner following, that is to say. (Laughter.) Two hundred thousand dollars a year were saved in that court by an abbreviated record. Now, it is no one's business in our American judicial organization to look after such things. It is no one's business to study them. There ought to be a chief clerk, and he would render as important a service as any one in the judicial machinery except the chief judge, to study the administrative work of the tribunals of the commonwealth to be responsible to the people, that money should not be wasted in that administrative work—to be responsible to the court, because no one should be more responsible to the court than the servants of the court who do its ministerial work.

I remember before I was caught for the teaching business, when I was endeavoring to earn a livelihood in the practice in my native state, I had a Hibernian client who had some very valuable town lots. He had not paid much for them, but as

often happens with town lots, they had increased in value far beyond their original cost. The Northwestern Railroad came into that community, and built what in ordinary communities we would call a brick depot, but in the enthusiastic boom days on the plains that was not a brick depot. It was a terminal station. (Laughter.) In building this terminal station they cut off my client's access to these lots, and under a statute which provides that when property has not been taken but has been damaged, an action in that commonwealth can be brought against the railroad company that does the damage, we brought an action against the company for damage to these lots. The company brought a very eloquent trial lawyer out from Chicago to try this case, and he presented a wonderful picture to the jury of the skyscrapers and the warehouses and the factories that were going up on Pat's lots because of being adjacent to this terminal station, and he convinced the jury that these lots had been benefited, and Pat had to pay the costs. About a week later this same railroad company ran one of its freight trains along its tracks, in and adjacent to Pat's farm, so carelessly and recklessly as to take the tail off of one of Pat's calves, and Pat immediately brought an action in the county court for heavy damages. The claim agent came down from Omaha very indignant. He said: "Mr. McCleary, what are you suing us for in a little matter of this sort? We always settle matters of this kind. Presently when that calf has grown up and you take him down to South Omaha and sell him, he will bring just as much as any other." But, says Pat: "It was only last week you was after taching me the great value of terminal facilities." (Laughter.)

Now, terminal facilities, ladies and gentlemen, are just as important in a speech as in a calf, and so I have only one thing more to suggest to you. Such a reorganization of courts will necessitate radical constitutional changes in most, if not all, of our commonwealths; but those changes are not as difficult as they used to be. All kinds of cures and nostrums that every lawyer knows run counter to the Anglo-American experience of centuries are finding their way without much difficulty into our constitution; and I believe if we exert ourselves vigorously in the profession we shall find it in the end as easy to do a thorough-



going bit of service to the commonwealth of this sort as the teachers of political science are finding it to put some of their patent ideas into our constitutions. But at any rate the life of our law is in enforcement. The very life of the common law is in its development through the experience of enforcement in concrete cases. The very future of our law is bound up in the courts, which are the living oracles of the law.

One of the great English jurists of the present generation has painted for us the realm of the jurist's fancy, where Moses and Manu sit enthroned, guiding the dawning sense of judgment and righteousness in the master races of the earth, where the crimes of a Bonaparte and the bigotry of a Justinian shall be forgotten, because at their bidding the rough places in the way of justice were made smooth. Our fathers were more concerned that this way of justice should somehow reach its goal than that it should be smooth. They thought of a litigant as a pedestrian, as a licensee rather than an invitee upon the way of justice, as one whose business it was to choose a competent guide, and to go slowly and deliberately and take the risk of visible dangers; and they were content if ultimately, at the expense of many hard knocks, and putting up over night at many a wayside station for repairs, he ultimately had a chance of reaching justice. Today a reckless generation is seeking justice in automobiles and motorcycles, and demands a smooth and well paved way that shall go swiftly and straightly somewhere—if to justice, so much the better.

And so I say the technicalities of the nineteenth century lawyer, and the deliberateness of the nineteenth century judge may sometimes be forgotten—it may sometime be forgotten that they reached justice by circuitous paths and over mountains and unbridged rivers—if the lawyer of the twentieth century learns to lay out a broad and straight and smooth and well paved highway, which also shall lead ultimately to justice. (Applause.)

JUDGE E. B. PERKINS: The ordinary busy lawyer forgets what he has heretofore known about the history of jurisprudence and court organization, and I know that I express the delight of every lawyer present at having had recalled to his memory what he had formerly known, and having added to his knowledge a very great fund of information that he did not possess, by the

address to which we have listened. Not only the philosophy of the administration of the law has been presented, but the various theories have been sketched for us so that every man present today is a wiser man about the administration of law than he was when he came here. As a partial evidence of our appreciation of this address I move you, sir, that Dr. Pound be elected an honorary member of the Texas Bar Association.

MR. SANER: I second the motion.

The motion was unanimously adopted by a rising vote.

THE PRESIDENT: It affords me great pleasure to claim you as an honorary member of this Association by the unanimous vote of the body. (Applause.)

DR. POUND: I thank you.

THE PRESIDENT: Dr. Pound's address is an outline of the subject of judicial reform and the reform of courts. A little later we will have a report from the special committee on that same subject. We have with us today Mr. A. H. McKnight, who has been giving special attention to the history of the jurisdiction of our Supreme Court and its development, and a paper from him on that subject will now be presented. (Applause.)

MR. MCKNIGHT: Mr. President, Gentlemen of the Bar Association, Ladies and Gentlemen: A well known Texas lawyer a few years ago stated to the late Chief Justice Brown that he had very little interest in the Supreme Court of the State, and so far as he was concerned it might be abolished. Judge Brown expressed surprise at the statement, and asked why it was made. The lawyer replied, half in jest, and half in earnest, that he had been trying for years, through applications for writs of error, to take his cases into the Supreme Court, but had never been permitted to do so, and for that reason the continued existence of the court was a matter of very little concern to him. (Laughter.) I presume there are not many lawyers here who would like to see the Supreme Court abolished, but there are many, doubtless, who find it difficult at times to determine whether the court has or has not, or should or should not, take jurisdiction of his cases. As a result we see the wheels of justice constantly clogged by applications for writs of error which the court finds

it necessary either to dismiss for want of jurisdiction, or else to refuse. We have listened to the very able address of Professor Pound with reference to the judicial machinery, both as it is and as it should be. We will hereafter have something more as to the judicial machinery as it should be in this State, but I purpose for a short time—it may be a longer time than some of you care to listen to—to call your attention to some matters as they relate to the judicial machinery that now exists. We must get along with this machinery for a little while, at least, and, therefore, before we undertake to say what ought to be done to guide us in the future, it is well for us to understand just what the situation is.

#### THE APPELLATE JURISDICTION OF THE SUPREME COURT OF TEXAS.

BY A. H. MCKNIGHT OF DALLAS.

The jurisdiction of the Supreme Court is of two kinds: first, original jurisdiction, and, second, appellate jurisdiction. While the original jurisdiction is important, it is the appellate jurisdiction with which lawyers are most concerned, and I purpose discussing it only.

The Courts of Civil Appeals were organized under an amendment to the Constitution, adopted September 22, 1891. This amendment (Article V, Section 3) provides that the appellate jurisdiction of the Supreme Court "shall extend to questions of law arising in cases of which the Courts of Civil Appeals have appellate jurisdiction, under such restrictions and regulations as the Legislature may prescribe." It further declares:

"Until otherwise provided by law, the appellate jurisdiction of the Supreme Court shall extend to questions of law arising in the cases in the Courts of Civil Appeals in which the judges of any Court of Civil Appeals may disagree, or where the several Courts of Civil Appeals may hold differently on the same question of law, or where a statute of the State is held void."

By Section 6, of Article V, the Courts of Civil Appeals are given "appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all civil cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law;" and it is provided that the decisions of such courts shall be conclusive on all questions of fact brought before them.

The Constitution thus makes the appellate jurisdiction of the Courts of Civil Appeals conclusive or final on all questions of fact, but leaves

the Legislature free to adjust the appellate jurisdiction on questions of law between the Supreme Court and the Courts of Civil Appeals as it may deem proper. The jurisdiction given the Supreme Court for the time being, however, shows clearly that the framers of the amendment had in mind the two purposes accomplished by the decision of cases—one the betterment of controversies, a private purpose, and the other statement of what the law is, a public purpose—and perceived the confusion that might result if the Courts of Civil Appeals were permitted finally to say what the law is, and that they sought to prevent this confusion by giving the Supreme Court power to harmonize the conflicting views of the judges and the Courts of Civil Appeals.

The Legislature, in 1892, passed two acts to carry into effect these provisions of the Constitution. In them it departed from the method of defining the jurisdiction of the Supreme Court used by the Constitution makers and specifically stated in what cases the jurisdiction of the Courts of Civil Appeals should be final. But by providing for certificates from the Courts of Civil Appeals in certain cases, the Legislature endeavored to preserve that unity of decision which the framers of the Constitution intended should obtain.

The first of these acts related to the jurisdiction of the Supreme Court and to practice in it, and the other to the jurisdiction of the Courts of Civil Appeals and to practice in them. In the first act it was provided that cases should be taken to the Supreme Court by writs of error from final judgments of the Courts of Civil Appeals, except in particular cases in which writs of error might be allowed in reversed and remanded cases, and that the Supreme Court should have appellate jurisdiction co-extensive with the limits of the State, "which shall extend to questions of law arising in all civil cases of which the Courts of Civil Appeals have appellate but not final jurisdiction." These provisions were carried into the Revised Civil Statutes of 1911 as Articles 1521 and 1522.

It becomes necessary, then, to look to the Courts of Civil Appeals Act to determine what cases might be carried to the Supreme Court. This matter is covered by the provisions of the said Act, which later became Articles 1591, 1619, 1620, 1621, and 1622 of the Revised Civil Statutes of 1911. Article 1591 reads:

"The judgments of the Courts of Civil Appeals shall be conclusive on the law and fact, nor shall a writ of error be allowed thereto from the Supreme Court in the following cases, to-wit:

"1. Any civil case appealed from a county court or from a district court, when, under the Constitution, a county court would have had original or appellate jurisdiction to try it, except in probate matters and in cases involving the revenue laws of the State or the validity of a statute.

"2. All cases of boundary.

"3. All cases of slander.

"4. All cases of divorce.

"5. All cases of contested elections of every character, other than for State officers, except where the validity of the statute is attacked by the decision.

"6. The judgments of said Courts of Civil Appeals shall be final in all appeals from interlocutory orders appointing receivers or trustees or such other interlocutory appeals as may be allowed by law.

"7. The judgment of said court shall be final in all other cases as to law and facts, except where appellate jurisdiction is given to the Supreme Court and not made final in said Courts of Civil Appeals."

Article 1619 authorizes the Courts of Civil Appeals to certify questions of law to the Supreme Court when deemed advisable, and Articles 1620 to 1622, inclusive, provide for certificates of dissent when a member of the Court of Civil Appeals enters his dissent in any case.

In 1899 the Legislature passed an act which makes it the duty of the Courts of Civil Appeals to certify questions of law to the Supreme Court in cases of conflict between their decisions and prior decisions of other Courts of Civil Appeals, and prescribes the duty of the Supreme Court in such cases. This statute cured a real defect in the law, but it still left the Supreme Court without power to harmonize conflicts between opinions of the Courts of Civil Appeals and its own opinions in county court cases; that is, cases that either originated or might have originated in county courts. *Newnom vs. Neill*, 101 Texas, 42. Its terms are substantially embodied in Articles 1623, 1624 and 1625, Revised Civil Statutes of 1911. Article 1623 reads:

"Wherever, in any cause, at any time pending in any of the Courts of Civil Appeals of the several Supreme judicial districts of the State of Texas, any one of said courts may arrive at an opinion in the decision of any such cause that may be in conflict with the opinion heretofore rendered, or hereafter rendered, by some other Court of Civil Appeals in this State on any question of law, and such Court of Civil Appeals refuses to concur with the opinion so rendered by such other Court of Civil Appeals, it shall be the duty of such court failing to concur with the opinion in conflict with the opinion so arrived at by such court, through its clerk, to transmit the question of law, duly certified to, involved in the cause wherein said conflict of opinion has arisen, together with the record of transcript in such cause, to the Supreme Court of the State of Texas for adjudication by the Supreme Court."

In 1907 the Legislature passed an act, which was amended in 1909, authorizing appeals from orders granting, refusing or dissolving temporary injunctions and regulating the practice on such appeals in the Courts of Civil Appeals and the Supreme Court. This act forms

the basis of Articles 4644, 4645 and 4646, Revised Civil Statutes of 1911.

The statutes thus mentioned, that is Articles 1521, 1591, 1619, 1620 to 1622, inclusive, 1623 to 1625, inclusive, and 4644 to 4646, inclusive, reveal the appellate jurisdiction of the Supreme Court as it existed prior to the taking effect of the 1913 amendment of Article 1521.

There was little room for controversy as to the jurisdiction of the Supreme Court under them. The Legislature simply provided that the Courts of Civil Appeals should have final jurisdiction in certain appealed cases, and that the Supreme Court should have appellate jurisdiction in all cases of which the Courts of Civil Appeals had appellate jurisdiction, except those in which the jurisdiction of the Courts of Civil Appeals was made final by statute. The Supreme Court could acquire no jurisdiction except through the Courts of Civil Appeals, and its jurisdiction was further limited to cases of which the Courts of Civil Appeals had appellate and not original jurisdiction. *Schintz vs. Morris*, 89 Texas, 648.

There was some contention that under Article 1522 the Supreme Court might have appellate jurisdiction in cases of the classes there enumerated, although the jurisdiction of the Courts of Civil Appeals in such cases was made final by Article 1591; but clearly there was no basis for this contention, and the Supreme Court so held in *T. & P. Ry. Co. vs. Langsdale*, 88 Texas, 513, and other cases. Articles 1619, 1620 to 1622, 1623 to 1625, and 4644 to 4646, gave rise to other contentions, which the Supreme Court disposed of, but not always properly, as it seems to me.

The Court held that it has jurisdiction to answer certified questions in all cases reaching it under Article 1619, without reference to the limitations of Article 1591. *Darnell vs. Lyon*, 85 Texas, 455; *Wallis, Landes & Co. vs. Stuart*, 92 Texas, 568; *M. K. & T. Ry. Co. vs. Mahaffey*, 150 S. W., 881. This conclusion, which clearly is correct, was based largely upon the fact that Section 35 of the original Courts of Civil Appeals Act, of which Article 1619 is an amendment, authorized such courts to certify questions only in cases of which they had final jurisdiction, though the Court broadly stated that there was no inconsistency between the article as amended and Article 1591.

A different conclusion, however, was reached under Articles 1620 to 1622. It was there held that a certificate of dissent would not lie if the case came within the provisions of Article 1591. *Herf vs. James*, 86 Texas, 230, and subsequent cases.

The correctness of this conclusion may be doubted, for Article 1591 being general and 1620 being special, and 1620 being the later expression of the Legislature, it should prevail over 1591. And, then, by giving the Courts of Civil Appeals authority in some cases to say finally what the law is, it destroys that harmony of decision which the Legislature evidently intended to preserve. It also makes the words, "in any case" mean one thing in Article 1620 and an entirely different thing in Articles 1619 and 1623.

The Supreme Court has uniformly held that its right to consider certificates of conflict under Articles 1623 to 1625 is not limited by Article 1591. *McCurdy vs. Conner*, 95 Texas, 246; *First National Bank of Aspermont vs. Conner*, 106 Texas, 549; *Warren vs. Wilson*, 192 S. W., 529. Not only has the Supreme Court jurisdiction in cases of conflict where the jurisdiction of the Courts of Civil Appeals is in terms made final by Article 1591, but it may enforce that jurisdiction by a writ of mandamus, as the cases just cited show.

Articles 4644 to 4646 have been construed to repeal by implication that part of Section 6, of Article 1591, which covers interlocutory orders on applications for temporary injunctions, *Spence vs. Fenchler*, 180 S. W., 597, but to leave the first five sections of the article in full force. *McFarland vs. Hammond*, 106 Texas, 579. The last decision was by a divided court, Associate Justice Hawkins dissenting.

Under the law prior to 1913. cases reached the Supreme Court by writ of error except under Articles 1619, 1620, and 1623. Under those articles, which are still in force, cases go up on certificates from the Courts of Civil Appeals, and where Article 1591 is applicable, they may be taken up on certificates only. That is to say, in such cases writs of error will not lie. *Gallagher vs. Rahm*, 88 Texas, 514; *Kemp vs. National Equitable Society of Belton*, 190 S. W., 699.

Where a writ of error lies, there is no necessity for a certificate, except as a means to expedite the disposition of cases. But there would appear to be equal reason for certificates in all cases. As stated, however, the settled construction of Article 1620 has come to be that a certificate will not lie under it when the case comes within the terms of Article 1591, and that certificates are authorized under Articles 1619 and 1623 in all cases whether coming within the terms of Article 1591, or otherwise.

In 1913 the Legislature, in effect, repealed Article 1522 as it had prior thereto existed, and amended Article 1521 to read:

"The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, which shall extend to questions of law arising in civil causes in the Courts of Civil Appeals in the following cases, when same have been brought to the Courts of Civil Appeals by writ of error, or appeal, from final judgments of the trial courts:

"(1) Those in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.

"(2) Those in which one of the Courts of Civil Appeals holds differently from a prior decision of its own, or of another Court of Civil Appeals, or of the Supreme Court upon any such question of law.

"(3) Those involving the validity of statutes.

"(4) Those involving the revenue laws of the State.

"(5) Those in which the railroad commission is a party.

"(6) Those in which, by proper application for writ of error, it is made to appear that the Court of Civil Appeals has, in the opinion of

the Supreme Court, erroneously declared the substantive law of the case, in which case the Supreme Court shall take jurisdiction for the purpose of correcting such error."

This amendment made important changes in the law affecting the jurisdiction of the Supreme Court. Instead of designating the classes of cases in which the jurisdiction of the Courts of Civil Appeals should be final and stating that the Supreme Court should have jurisdiction in all other cases, as the law of 1892 did, it adopted the method of defining the appellate jurisdiction of the Supreme Court that was used in the Constitution. That is, it expressly named the classes of cases in which the Supreme Court should have appellate jurisdiction. It also allowed writs of error in reversed and remanded cases, contrary to the general practice theretofore existing, and permitted certificates in all cases falling within its terms, except Class 6 cases. In addition it confined the Supreme Court's jurisdiction to appeals from final judgments of trial courts.

Nothing is said in the amendment about the final jurisdiction of the Courts of Civil Appeals. But that was unnecessary, for when the Legislature stated that the Supreme Court should have jurisdiction of certain cases, it as clearly said that the jurisdiction of the Courts of Civil Appeals should not be final as to the classes of cases enumerated, and that it should be final as to all other classes of cases, as if the jurisdiction had been defined in those terms.

The bar of the State generally assumed that Article 1521, as amended in 1913, limited Article 1591, and that when the amendment became effective the Supreme Court had jurisdiction over all cases of the classes therein enumerated, whether the jurisdiction of the Courts of Civil Appeals in such cases had prior thereto been final or not. And this view was adopted by the Supreme Court for a time in passing upon writs of error, at least as to cases falling within Section 6. Later, however, the Court, in *Cole vs. The State of Texas*, 106 Texas, 472, by a majority opinion, held that Article 1591 was not affected by the Act of 1913, and that the jurisdiction of the Courts of Civil Appeals was still final in the cases enumerated therein, notwithstanding the provision of the later act.

The court based its decision upon three propositions: (1) That repeals by implication are not favored; (2) That the subject of Article 1521 is different from the subject of Article 1591; and (3) That even if both articles relate to the same subject, there is no such repugnancy between them as to make the one last enacted repeal any part of the other.

I do not deny the first proposition. But that the court has given it a wrong application will become apparent from the discussion of propositions 2 and 3.

The second proposition is clearly unsound. While abstractly the jurisdiction of the Supreme Court is one thing and the jurisdiction



of the Courts of Civil Appeals is another thing, appealed cases reach the Supreme Court only through the Courts of Civil Appeals, and, therefore, whatever affects the appellate jurisdiction of the Supreme Court necessarily enlarges or restricts the conclusive or final jurisdiction of the Courts of Civil Appeals. If in any case the jurisdiction of the Court of Civil Appeals is final, the jurisdiction of the Supreme Court cannot extend to the case; and if the Supreme Court is given jurisdiction over the case, the jurisdiction of the Court of Civil Appeals cannot be final. It follows, then, that when the Legislature enlarges or restricts the jurisdiction of the Supreme Court, it at the same time restricts or enlarges the jurisdiction of the Courts of Civil Appeals, and this whether their jurisdiction is in terms referred to or not.

It is like changing the location of a partition fence in an inclosure. The fence cannot be moved without enlarging one part of the inclosure at the expense of the other, or vice versa; and if the fence be removed entirely, a single inclosure will remain.

Coming to the third proposition, a little consideration will show that it cannot stand the light of reason.

Suppose the Legislature in defining the jurisdiction of the Supreme Court had amended Article 1521 by eliminating the words "but not final" instead of adopting the language used. The article would then have read:

"The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, which shall extend to questions of law arising in all cases of which the Courts of Civil Appeals have appellate jurisdiction."

What would have been the effect of the amendment? Clearly it would have given the Supreme Court jurisdiction of questions of law in all cases of which the Courts of Civil Appeals have appellate jurisdiction. There can be no question about this. No court would argue otherwise.

This effect, it will be noted, would have been produced without referring in terms to Article 1591, but the result would have been the same as if all that part of Article 1591 relating to the conclusiveness of the jurisdiction of the Courts of Civil Appeals on questions of law had been expressly repealed. And why? Because, as previously stated, the subject matter in the practical sense is single, and the Supreme Court could not be given jurisdiction over questions of law in all cases without destroying the conclusive character of the jurisdiction of the Courts of Civil Appeals.

Now, if the elimination of the words, "but not final" would have had the effect stated, upon what theory can it be contended that a definition of the Supreme Court's appellate jurisdiction in any other terms does not operate the same way? Clearly there is none. Whether the Supreme Court is given jurisdiction of questions of law in all cases over which the Courts of Civil Appeals have appellate jurisdic-

tion, or whether it is given jurisdiction in all such cases with stated exceptions, or whether the classes of cases over which it shall have jurisdiction are specifically enumerated, the conclusive character of the jurisdiction of the Courts of Civil Appeals is, in any event, taken away from the cases over which the Supreme Court is given jurisdiction.

Accepting this conclusion—and there can be no doubt of its correctness—Article 1521, as amended in 1913, and Article 1591 mean that the jurisdiction of the Courts of Civil Appeals is conclusive on questions of fact in all cases and on questions of law in all cases of which the Supreme Court is not given jurisdiction by Article 1521; and that as to the classes of cases enumerated in Article 1521, the jurisdiction of the Courts of Civil Appeals is not final, but the Supreme Court has power to review their decisions in them when brought to it in the proper manner.

The Court construed Article 1521 as if it contained a provision, however worded, to this effect: Provided, however, the foregoing shall not apply to cases of which the Courts of Civil Appeals are given final jurisdiction by Article 1591, Revised Civil Statutes.

But the Court had no right to read a provision of that kind into the Act. The Legislature might have put it there—and doubtless would have done so had it thought proper—but the matter is beyond the province of the court. It must take the act as it came from the Legislature, and be governed by those terms.

As the Supreme Court of the United States said, in *Caminetti vs. United States*, 242 U. S., 485:

“It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms.

“Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion.”

The rule thus announced has been stated and applied by the Supreme Court in many cases, and a review of them is unnecessary. The rule has application here. There is no ambiguity or uncertainty about Article 1521, and, therefore, no room for construction. The language is simple. It states in as plain terms as could have been used that the jurisdiction of the Supreme Court shall extend to questions of law in civil causes of the enumerated classes. There are no qualifying or limiting words—no terms indicating that the Legislature did not mean exactly what it said.

It must be remembered that the 1913 amendment is a much later enactment than Article 1591, and it is everywhere recognized that in

cases of conflict the last enactment limits and is not limited by the first. As the Supreme Court of the United States aptly said in *Hamilton vs. Rathbone*, 175 U. S., 421, prior acts may be resorted to to *solve* but not to *create* an ambiguity. There being no uncertainty in the last act, there is here no ambiguity to solve.

Article 1591 does not make the jurisdiction of Courts of Civil Appeals final in cases involving the revenue laws of the State or the validity of a State statute even though such cases originated in the county court. The Supreme Court is expressly given jurisdiction of these classes in Sections 3 and 4 of the 1913 amendment. Those sections, then, must be construed to include all cases of the classes named. And if they are so construed, how can the other sections be said to include anything less than all the classes of cases there enumerated?

That the 1913 amendment modified Article 1591, as here indicated, finds support in the 1917 amendment, which will hereafter be noticed more in detail. That amendment provides with respect to Section 6 that there shall be excluded from the Supreme Court's jurisdiction those cases in which the jurisdiction of the Courts of Civil Appeals is made final by statute. The placing of this limitation on Class 6 indicates that the Legislature thought it did not exist as to the other classes, and would not exist as to Class 6 but for the provision. And then any other construction deprives the limitation of every vestige of meaning, which, of course, is not permissible. *Spence vs. Fenchler*, 180 S. W., 597. It is the duty of courts to give every provision of an act some meaning where it can reasonably be done. It can reasonably be done here, and unless it is done, the limitation must be read into the remaining five sections, or held to mean absolutely nothing.

The Cole case is directly in conflict with *McCurdy vs. Conner*, 95 Texas, 246, and the other cases following it.

Article 1623 provides that wherever in any case a conflict arises between the opinion of a Court of Civil Appeals and a prior opinion of some other Court of Civil Appeals, it shall be the duty of the Court of Civil Appeals failing to concur in such prior opinion to certify the question of law involved to the Supreme Court. When that provision was enacted Article 1591, substantially as we now have it, was on the statute books. It says nothing whatever about Article 1591, yet, as we have seen, the Supreme Court holds that it requires the Courts of Civil Appeals to certify questions of law in cases coming under Article 1591, and that writs of mandamus may be awarded to compel them to do so.

The situation with respect to the 1913 amendment is upon principle the same. It is the later enactment and literally covers ground in part covered by Article 1591. If Article 1623 in part repealed Article 1591, the 1913 amendment of Article 1521 must necessarily have had the same effect.

In passing, I note the statement of the court in the Cole case that the inconsistency, if any, between Article 1521 and Article 1591 arises

only in connection with Section 6 of Article 1521, meaning that as to the other five sections it was clear that Article 1591 would take precedence. This statement seems to have been based upon a misapprehension of the facts. I find no warrant whatever for it in the language of the two articles. The first five sections of Article 1521 are as unqualified as is Section 6, and all of them have the same introductory matter. It is beyond question, therefore, that the inconsistency is not limited to Section 6, but applies to all the sections.

Let us now pass to the 1917 amendment of Article 1521, which (omitting the immaterial part of Section 6) reads:

"The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, which shall extend to all questions of law arising in cases of which the Courts of Civil Appeals have appellate jurisdiction in the following cases when same have been brought to the Courts of Civil Appeals by writ of error or appeal from final judgment of trial courts:

"1. Those in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.

"2. Those in which one of the Courts of Civil Appeals holds differently from a prior decision of its own or of another Court of Civil Appeals or of the Supreme Court upon any such question of law.

"3. Those involving the construction or the validity of statutes.

"4. Those involving the revenue laws of the State.

"5. Those in which the Railroad Commission is a party.

"6. In any other case in which it is made to appear that an error of law has been committed by the Court of Civil Appeals of such importance to the jurisprudence of the State, as in the opinion of the Supreme Court requires correction, but excluding those cases in which the jurisdiction of the Court of Civil Appeals is made final by statute. Upon the showing of such an error the Supreme Court may, in its discretion, grant a writ of error for the purpose of revising the decision upon such question alone, and of conforming its judgment to the decision thereof made by it. Until otherwise provided by rule of the Supreme Court the application for writ of error in such a case shall immediately after the title of the cause and the address to the court, concisely state the question decided by the Court of Civil Appeals in which error is asserted, in order that the Supreme Court may at once see that such a question is presented as is contemplated by this provision."

The preliminary matter of this amendment is in substance the same as the corresponding part of the 1913 amendment, and Sections 1, 2, 3, 4 and 5 are identical in meaning with the same sections of the 1913 Act, except that Section 3 as amended in 1917 gives the Supreme Court jurisdiction over cases involving the *construction* of statutes as well as over cases involving the *validity* of statutes. The material

difference between the two statutes is found in Section 6 of Article 1521 and in Article 1522.

In the 1913 Act, Section 6 gave the Supreme Court jurisdiction of substantive law questions; the present act substitutes errors of law committed by the Courts of Civil Appeals "of such importance to the jurisprudence of the State as in the opinion of the Supreme Court requires correction," excluding, however, such errors in cases of which the Courts of Civil Appeals have final jurisdiction under other provisions of law. Article 1522, as amended in 1913, provided that all cases mentioned in Article 1521 might be taken to the Supreme Court by writ of error or by certificate, except those mentioned in subdivision 6, which should be carried up by writ of error only. The 1917 amendment reads:

"All cases mentioned in Article 1521 may be carried to the Supreme Court, either by writ of error or by certificate from the Court of Civil Appeals, as elsewhere provided, but the Court of Civil Appeals may certify any question of law arising in any of the above cases at any time they may choose so to do, whether before or after decision of the case in said court."

Notwithstanding the statement that all causes, etc., may be carried to the Supreme Court by writ of error or by certificate of dissent or conflict, it is clear that, from a practical standpoint at least, Section 6 cases can be taken up on writ of error only; so the present Article is not different in effect from the 1913 amendment, except for the provision at the end authorizing certified questions in all cases coming under Article 1521.

An interesting question arises as to the effect of this provision on Article 1619. Upon the reasoning of the Cole case it should have no effect, for while both relate to the same matter, the subject of Article 1619 is the duty of Courts of Civil Appeals in certain cases, and Article 1522 relates to practice in the Supreme Court, and notwithstanding the later act, the former should stand unaffected. It may be said, however, that the provision of Article 1522 by implication limits 1619 to cases over which the jurisdiction of the Courts of Civil Appeals is not final. My own view is that Article 1619 is still in full force, notwithstanding the act of 1917, but the process of reasoning by which I reach that conclusion is not that adopted in the Cole case.

Another question that arises is whether the Supreme Court now has jurisdiction of appeals from orders on applications for temporary injunctions, its jurisdiction under the 1917 amendment being confined to appeals from final judgments of the trial courts.

Both *Spence vs. Fenchler*, 180 S. W., 597, and *McFarland vs. Hammond*, 106 Texas, 579, arose under the 1913 act, which in this respect is the same as the present law, and, of course, if the basis of these decisions is correct, the Supreme Court still has jurisdiction of such

appeals, notwithstanding the statement in Article 1521 that this jurisdiction shall be confined to appeals from final judgments. But, if, as I conceive to be true, the Supreme Court merely arrived at a correct result, while stating a wrong reason for it, this is not necessarily the case.

I do not believe Articles 4644-4646 confer any jurisdiction whatever upon the Supreme Court. It occurs to me that such jurisdiction as the Supreme Court had when this statute was enacted, was conferred by Articles 1521 and 1522 (using the present Revised Statutes numbers), and by those articles only. They gave the Supreme Court jurisdiction in all cases where the jurisdiction of the Courts of Civil Appeals was not final, and when the Legislature enacted Articles 4644-4646, it necessarily repealed subdivision 6 of Article 1591 in so far as it relates to appeals from orders granting, refusing or dissolving temporary injunctions. When the conclusive character of the jurisdiction of the Courts of Civil Appeals was taken away, the jurisdiction of the Supreme Court automatically attached.

Although the method adopted by the Supreme Court in *Spence vs. Fenchler* to arrive at the result stated, and the method which I think the Court should have adopted, lead to the same end, it is not a matter of indifference which method is followed. The Court's method gives rise to confusion and complicates the problem of construing the statutes, while the other method is simpler and leads to a more logical conclusion.

This is illustrated by the rulings on Articles 1619, 1620 and 1623. As heretofore pointed out, the Supreme Court has held that Articles 1619 and 1623 are not limited by Article 1591, whereas Article 1620 is limited by it. If Article 1521 had been looked to in each case as the source of the Court's power and the other articles had been treated as incidental, the same conclusion would have been reached in all three cases. This is the logical holding, and I think it is the holding that the Legislature intended.

It may be suggested that Article 1619, Articles 1621 and 1622, and Articles 1624 and 1625 impose duties upon the Supreme Court, and therefore, impliedly confers jurisdiction upon it, such was the reasoning in *Spence vs. Fenchler*. That, however, is not a necessary conclusion; for under Article 1521 the jurisdiction of the Supreme Court at once attached when the conclusive character of the jurisdiction of the Courts of Civil Appeals was removed, which was done when these exceptions to Article 1591 were passed. And, then, it must be remembered that the same Legislature that enacted Article 1521 also enacted Articles 1619 to 1622, inclusive, and that the last mentioned Articles are in the Courts of Civil Appeals Act. If the Legislature had intended by them to confer jurisdiction upon the Supreme Court, would it not have placed them in the act defining that Court's jurisdiction?

It logically follows that, since Article 1521, as it now stands, limits

the jurisdiction of the Supreme Court to appeals from final judgments of trial courts, such court no longer has the authority to perform the duties previously imposed upon it by Articles 4644-4646, and which it had the power to perform when they were imposed; and, therefore, that the decisions of the Court of Civil Appeals on applications for temporary injunctions are final in all cases, just as their opinions are conclusive on appeals from interlocutory orders appointing receivers or trustees.

The Supreme Court has followed the Cole case in passing upon writs of error under the 1917 act, but there is even less justification for this than there was for the practice under the amendment of 1913. The Court was doubtless induced to take this course by the fact that the Cole case was decided in 1914 and the presumption that if the Legislature had thought it wrong, clearer expression of that thought would have been made than we find in the 1917 amendment.

But assuming that the Cole case correctly construed the act of 1913, does it follow that the 1917 amendment should receive the same construction? Clearly not. If, because of Article 1591 and the failure of the Legislature expressly to repeal or modify it, the Supreme Court's jurisdiction as defined in the first five sections of Article 1521 is limited by its terms, the jurisdiction of the Supreme Court is likewise limited as to Section 6 cases. It was, therefore, unnecessary to say anything in Section 6 about cases of which the Courts of Civil Appeals have final jurisdiction. There is nothing corresponding to this limitation in the old law.

The Legislature evidently thought that but for the insertion of this provision in Section 6, the Supreme Court's jurisdiction would not in any wise depend upon Article 1591, and so believing they must have intended that Article 1591 should have no application to Sections 1, 2, 3, 4 and 5. Attention has heretofore been called to the fact that any other construction robs the limitation in Section 6 of all meaning, which is not permissible.

Just one other fact in this connection. Section 3 gives the Supreme Court jurisdiction of cases involving the *construction* or the *validity* of statutes. Under Article 1591 the jurisdiction of the Courts of Civil Appeals is final in county court cases involving the *construction* of statutes but not in county court cases involving the *validity* of statutes. To construe Article 1591 as limiting Article 1521 restricts the jurisdiction of the Supreme Court over cases involving the construction of statutes to cases that must originate in the district court, while cases involving the validity of statutes may go to the Supreme Court without reference to whether they originate in the district court or the county court; and this, notwithstanding the fact that the same section of Article 1521 confers jurisdiction upon the Supreme Court in both classes of cases, and such jurisdiction is conferred in a single sentence and in identically the same language. The Legislature can hardly have intended any such result.

The 1917 amendment is the last expression of the Legislature on this subject, and being specific and direct as to the jurisdiction of the Supreme Court, while other statutes relating in any way to the same subject matter are incidental, it should be treated as the present sole source of power, and any other statutes that conflict with it should be considered repealed.

So construing the present Article 1521, its plain meaning is that the Supreme Court shall have jurisdiction of all questions of law in cases of which the Courts of Civil Appeals have appellate jurisdiction in the classes designated 1, 2, 3, 4 and 5, no matter in what courts the cases originated or what their nature may be, and that the Supreme Court shall have jurisdiction of all cases falling within class 6 of which the jurisdiction of the Courts of Civil Appeals is not made final by Articles 1591. Or, to state the matter more concretely, the Supreme Court now has no jurisdiction over a case originating in the county court or one that might have originated there, a boundary case, a slander case, a divorce case, or a contested election case (other than for a State office), unless the judges of the Courts of Civil Appeals disagree upon a question of law material to its decision, or unless the Court of Civil Appeals deciding the case holds differently from a prior decision of its own or of some other Court of Civil Appeals or of the Supreme Court, or unless the case involves the validity or the construction of a statute or the revenue laws of the State, or unless the Railroad Commission is a party to it. But, in a case of any of these classes, if the judges of the Courts of Civil Appeals disagree upon a question of law material to its decision, or if the Court of Civil Appeals deciding the case holds differently from a prior decision of its own or of some other Court of Civil Appeals or of the Supreme Court, or if the case involves the validity or the construction of a statute or the revenue laws of the State, or if the Railroad Commission is a party to it, the Supreme Court has jurisdiction. Jurisdiction, however, is denied it in all cases of these classes where the ground for the application is that stated in Section 6. In cases of any other class, the Supreme Court may take jurisdiction under Section 6. And, of course, it has jurisdiction of all cases coming under sections 1, 2, 3, 4 and 5 of classes other than those enumerated in Article 1591.

Stating the matter another way, the first five classes of Article 1521 are exceptions to Article 1591. If one of the exceptions does not exist in the case, Article 1591 is given in full force. If any such exception does exist, the provisions of Articles 1591 must yield to Article 1521. But on questions arising under Section 6, the jurisdiction of the Supreme Court is limited to cases other than those named in Article 1591. It can acquire no jurisdiction, no matter how important to the jurisprudence of the State the error of law committed by the Court of Civil Appeals may be, if the case falls within any of the classes there enumerated.



To give any other meaning to these statutes does violence to the language used and thwarts the legislative purpose as thus clearly and unequivocally expressed. Investing them with this meaning, they give the Supreme Court power to harmonize conflicts among the several courts and between members of a single court and confer jurisdiction upon it to decide certain classes of cases which, because of their nature alone or because of their nature and the nature of the error of law committed by the Courts of Civil Appeals in disposing of them, are regarded as of unusual importance, thus making it a Supreme Court in fact as well as in name.

A Supreme Court, where there are intermediate courts of appeals, need not have jurisdiction of all appealed cases. But if it is to be true to its name, it must have power to decide all cases of conflict of opinion. Confusion and uncertainty in the law inevitably result if such authority does not exist. Our Supreme Court now has that power, as I construe the statute, and, assuming a reasonable dispatch of business, the present law is satisfactory in this respect. Under the Court's construction of the statute, however, it is otherwise, and unless the Court shall change its views, it will be necessary for the Legislature to amend the law before it can properly perform its functions.

In conclusion, I desire to call attention to the necessity of amending Section 6 of Article 1521. The 1913 provision, while perhaps not ideal, had the correct idea underlying it, and something substantially like it should be substituted for the present Section 6. The section as it now stands limits the Court's jurisdiction unduly and is uncertain in meaning. And, then, it is probably void because, in making the Court's jurisdiction entirely optional with it, the provision confers legislative power upon the Court, contrary to constitutional provisions.

At 12:30 the meeting adjourned until 2:30 p. m.

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#### AFTERNOON SESSION—JULY 4, 1918.

The meeting was called to order at 2:30 p. m. by the President.

MR. A. D. SANFORD: Mr. President: May I interrupt the regular order of business for a moment, to present a matter somewhat personal in its nature. I have a letter, addressed to our President, from our former President, John L. Dyer. I would like to read it. It is dated El Paso, June 26, 1918, and addressed to Mr. C. K. Lee:

"Yours of the 24th to Mrs. Kennedy, my secretary, received, and I appreciate same.

"For five weeks I have been going through hell. For a week

it looked like I would either lose my leg or my life, but I pulled through all right. The crisis is thoroughly past, and I am on the road to recovery. However, it will be at least three weeks before I can be out of bed. My leg was cut in many places and drain tubes put in, and it is going to take some time for it to heal. As soon as I can put my foot on the ground I shall go to California for a month, for rest and recuperation.

"Of course, you appreciate that my condition prevents my attending the meeting of the Bar Association at Wichita Falls. To me this is a great disappointment. I have not missed an Association meeting for years. I had planned and intended to go and you cannot quite realize how keen the disappointment is that I cannot attend and meet my friends.

"Will you please explain to them the reason I cannot attend, and won't you give to all of them my best regards and tell them I am thinking of them during the meeting and wishing I could be with them.

"With kindest personal regards for yourself, I am, yours sincerely,  
"JNO. L. DYER."

I move that the Secretary of the Association be instructed to send a telegram to Mr. Dyer, expressing our sympathy in his illness, and our regret at his inability to attend this meeting, sending the telegram in the name of the Association.

(The motion was seconded and carried unanimously.)

MR. SANER: I have a telegram from one of our old members:

"Chicago, Illinois. Trust you are having a fine meeting. Regret I cannot be there. Give my regards to all friends. William H. Burges."

THE PRESIDENT: I know I can say for the older members of the Association that no man's leaving the State and being unable to attend the meetings of this Association brings more regret than that of William H. Burges.

MR. ESTES: Mr. J. B. Dooley, of Amarillo, has been nominated for membership, and I move that he be elected to membership in the Association.

(The motion was seconded and unanimously carried.)

MR. ESTES: As the members know, the report of the committee that was appointed yesterday is set for a special order of

business at 2:30 this afternoon. That disarranges the program somewhat. There are a number of committees to report. The anticipation is that the debate in connection with this report of the special committee that was appointed at the last meeting of the Association will probably occupy much of the time this afternoon, and tomorrow we might be crowded for time. On that account, in order to dispose of routine business in so far as possible, the board of directors have met and recommended that the election of officers for the ensuing year—those officers to go into office at the conclusion of the Wichita Falls meeting—be made a special order of business at the conclusion of this matter that is set for 2:30.

MR. BARWISE: May I interrupt a moment to make a motion. We heard a young lawyer talk at the luncheon this noon. He is a Lieutenant in the army. He is a member of the Tennessee Bar. I move that Lieut. Oscar Coates be made an honorary member of the Texas Bar Association.

(The motion was seconded and unanimously carried. Lieut. Coates was called on for a speech, but was reported to be not present in the hall.)

MR. SANER: He said he was in a hurry to get to France.

MR. LAWTHER: Instead of being in a hurry to get to France, the young man is in a hurry to get to Berlin.

THE PRESIDENT: The report of the committee on the resolution of Major Townes is now in order, Mr. Cecil Smith, chairman.

MR. SMITH: Mr. President and Gentlemen of the Association: I will state that the committee took the resolution as penciled by Major Townes and the amendment suggested by Mr. Paddock, and blocked it out substantially as it was read to you and adopted. It is endorsed by all the members of the committee except Mr. Moses, who concurs thoroughly in the sentiment of the resolution, but thinks the recommendations are perhaps a little drastic, which the other four members have signed.

Mr. Smith thereupon read the report of the committee as follows:

“WHEREAS, our beloved country is now engaged in the unprecedented world war, bending its every energy to break and

overcome Prussianism and tyranny and make the world safe for democracy; and,

“WHEREAS, our National Congress has wisely adopted certain methods of raising an army by the selective service process, and has authorized our President to prescribe rules and regulations for the proper and effective operation and enforcement of the selective service law; and,

“WHEREAS, certain lawyers in each county in Texas (and other States) have been designated by the President as members of legal advisory boards, and certain other lawyers in each county have been duly designated as associate members of such legal advisory boards, for the express purpose of rendering efficient and free advice and assistance to registrants and officials engaged in the administration of selective service regulations in the matter of securing proper and just classification under the law; and,

“WHEREAS, the President issued a solemn proclamation, coincident with the promulgation of the selective service regulations, calling upon each and every lawyer (whether expressly designated as a member or associate member of a legal advisory board or not) to assist registrants and draft officials gratis in every way possible, to the end that the selective service law and regulations might be impartially and properly enforced and all possible errors avoided, and all lawyers were in effect drafted by the Federal Government to perform this necessary and patriotic service during the existing emergency; and,

“WHEREAS, the very great majority of the members of the Texas State Bar Association and the Texas lawyers generally have rendered and are rendering splendid patriotic service to their country by gladly responding to the request of the President as above set forth, and have advised, assisted and counseled with registrants and draft officials without fear or favor and without charge; but,

“WHEREAS, it has been brought to the attention of this Association that a few Texas lawyers have been so unmindful of their duty to their country, and so deaf to the appeal of the President, and so unpatriotic in their actions, and so completely actuated and moved by selfishness and greed, as to demand, receive or extract from registrants or their representatives fees (and in some instances very large and shocking fees) for ser-

vices rendered or supposed to be rendered in behalf of such registrants, in the matter of assisting or attempting or purporting to assist such registrants in obtaining deferred classification, or avoiding military service altogether, and that the same conditions have prevailed and the same conduct indulged in with respect to obtaining the discharge of those inducted into the service; and,

"WHEREAS, the War Department, through the Provost Marshal General, has found such pernicious activities upon the part of said lawyers to be most detrimental to the Government in raising an army in accordance with the plan adopted;

"NOW, THEREFORE, be it resolved by the Texas State Bar Association in annual meeting duly assembled, as follows:

"First: That this Association hereby renews and reiterates its fidelity to our National Government, and to the President and to our fighting forces, whether on land or sea;

"Second: This Association hereby congratulates, thanks and commends that great majority of Texas lawyers who have been and are so generously assisting our Government in the proper administration of the selective service law;

"Third: This Association hereby denounces as unpatriotic, against professional ethics, and beneath a decent lawyer, the practice by a few Texas lawyers of charging or accepting from registrants or their representatives fees of any amount (whether large or small) for services in connection with their classification, or in any wise appertaining thereto. The contractual relation of attorney and client should in no event exist between a Texas lawyer and a registrant or his representatives, in so far as the enforcement of the selective service regulations are concerned, except in cases arising in the courts;

"Fourth: This Association hereby strongly recommends that those Texas lawyers who have charged registrants or their representatives fees, or accepted compensation for services rendered or supposed to have been rendered, or who engage in such practice in the future, be expelled from this Association, if they be members thereof, and that they should be debarred from practicing their profession.

"CECIL H. SMITH,

"A. H. CARRIGAN,

"JAMES W. MCCLENDON,

"W. B. PADDOCK."

THE PRESIDENT: Gentlemen, you have heard the resolutions. What will you do with them?

JUDGE PERKINS: I move their adoption.

MR. MARTIN: I understood they were adopted yesterday.

THE PRESIDENT: The sentiment of them was adopted yesterday. The phraseology and form are now subject to adoption.

(The motion to adopt the resolution was seconded by Judge Wear.)

MR. H. L. MOSELEY: I move that the report be amended by striking out that portion of it which recommends that an attorney shall be debarred from practicing his profession and expelled from this Association.

MR. DAYTON MOSES: I second the motion made by Mr. Moseley.

THE PRESIDENT: That means the last paragraph.

MR. MOSELEY: Yes; I move to amend that motion by striking that clause out.

THE PRESIDENT: Is there any discussion? The motion moves the adoption of the resolution as read. The amendment moves that the fourth paragraph be stricken out. The amendment is before the house.

MR. MOSELEY: My amendment is that the resolution be adopted with the fourth clause stricken out.

MR. MOSES: I had the honor to be appointed as one of the members of that committee. As stated by the chairman, Mr. Smith, I was unable to agree to the report in its entirety, and, therefore, withheld my signature from the same. And as stated by Mr. Smith, I am in hearty accord with the sentiment that is expressed in that report, and with the sentiment that was expressed, and that, I believe, met with the hearty approval of every member of this Association, in the splendid remarks made by Major Townes yesterday. But I cannot believe that it is wise to adopt that last clause, because I do believe that there are many lawyers in Texas who have charged nominal fees, who are as patriotic as I am. I believe that in charging fees that

they did, ten dollars, twenty-five dollars, or something in that neighborhood, for the services they performed, they had no unpatriotic intent. Those services were performed not as members of the advisory board, because the greater portion of the service that was rendered by members of the bar in assisting men to receive a deferred classification or a postponed induction into the army occurred last year, before the questionnaires were formulated and sent out. It is known to some of you that the special work in which I am engaged is as legal representative of the Cattle Raisers Association, with the aims and purposes of which organization many of you are familiar. As the representative of that organization, I was called on a great many times and became thoroughly familiar with the conditions in what is known as the range portion of Texas. My attitude was a little bit different from that of a great many lawyers, for the reason that I expect I represented or assisted more men in making applications for exemption, because of their activity in the livestock business and in the stock farming business, than any other person. By reason of my employment I receive a salary that is satisfactory to me, and in representing these gentlemen who appealed to me for aid—not throwing any bouquets at myself—I considered that it came within the province of my employment to assist in cases I regarded as being worthy without compensation, and I did assist them without compensation, for that reason, as well as for others. The work entailed upon those who assisted in the preparation of those claims for exemption or so-called deferred classification was very great. I have spent as much as the greater portion of two days on one claim, and I dare say that there are a great many lawyers in Texas, unless their brains work a great deal quicker than mine does, and they are able to find out the facts and have them reduced to type quicker than I can, who have spent equally as much time as I have. The questionnaires that were sent out in November could all be answered, every blank space could be filled, and it would give no information that would cause the district board to appreciate that the person who was seeking an agricultural deferred classification under the present order of things, or an exemption under the old order of things, would be worth more to the Government by remaining in that field of his activity than in joining the colors. Now, I believe that there are many men who have

charged nominal fees, who did so without knowledge on their part, or belief on their part, that they were doing anything wrong; that men have done this who have patriotically and gladly answered the call of the Government in the several Liberty loan sales, the Red Cross drives, and in the campaign for financing the Y. M. C. A. To say that those men, who have charged any character of fee, who have charged, we will say, ten dollars or twenty-five dollars, for the time spent in having a conference with the registrant or his representative and the several witnesses, and in formulating the affidavits, each of which was somewhat different in its nature, and in putting them in language so that it would not consume too much of the time of the district board to read them, and presenting a photographic representation in words of the activity of that registrant—to say that men who have charged only a nominal fee for such services should be expelled from this Association and should be debarred from the practice of law, I think is going too far. As persuasive of the correctness of this proposition, you recall that a short time ago Judge Batts, in his instructions to the Federal grand jury at Austin, if the newspapers reported him correctly, stated that in his opinion one who charged only a nominal fee, \$25.00, \$50.00, or \$100.00, could not perhaps be said to be acting in an unpatriotic manner, or in a way that would interfere with the provisions of the draft and the raising of an army. Of course, that was based upon a question of whether that was a violation of law. Now, I do not believe that any charge should be made at all. I think those lawyers who have made a charge, even a modest charge, ought not to have done so. And those lawyers who capitalized their influence, or their supposed influence, and who charged exorbitant fees, the amounts that were suggested by Major Townes on yesterday, ought to be held in the contempt, not only of the bar of the State, but of every patriotic American citizen, and, certainly, of every father and mother of the boys who have joined the colors. But I can see a great deal of difference between a man who charges a fee of \$500.00 for the purpose of representing a registrant who seeks exemption from the army, or who seeks to be put in a deferred classification, and one who charges \$10.00 or \$25.00, for the four, five, six, eight or ten hours of his time that has been taken up in the preparation of the many affidavits that are necessary to be prepared in con-



nection with these claims for deferred classification. I have felt keenly this war, as many of you have. If it is not immodest in me to say so, every relative I have in the second degree on earth is a volunteer in the army. My oldest son is in Italy, a lieutenant in the aviation corps. My second son is at Fort Sheridan, Illinois. A brother and eight nephews are in the service. None of those men asked for an exemption or a deferred classification, and none would have been entitled to it had he asked for it. Therefore, I can conceive of no reason that would cause me to be biased in this matter, for, God knows, I want an army, and an effective army, and as many armies as it is possible to raise and train, in the shortest length of time possible, with the hope that some of my blood may come back. But in our zeal to express our indignation of those members of the bar who have prostituted their profession by charging outrageous fees, we ought not to do an injustice to those of our brethren who, through carelessness or lack of information, may have fallen into an error that, in my judgment, they will not commit again. For the reasons stated, I believe the latter portion of the resolution is too drastic and too severe.

MR. DABNEY: Mr. President, and Gentlemen: I think this matter can be expedited by this suggestion. I think that last clause belongs more properly to the committee of which I am a member. We had the proposition that Mr. Moses has advanced before us. We were a committee appointed to devise machinery and to determine upon the process of carrying out what this Association wanted to do. I think we have covered Mr. Smith's idea, and all of these gentlemen's ideas, and also Mr. Moses' idea, without conflict, and if this last clause is struck out, if this meeting afterwards thinks we have not avoided this collision of ideas, then it can be inserted again, but I think we have harmonized in our report both the idea that Mr. Moses speaks of and the one Mr. Smith advocates, in a very practical way. I think we can avoid discussion by pursuing that course.

MR. LAWTHER: I make a motion that, without taking it up for consideration now, but for the purpose of enabling the meeting to understand Mr. Dabney's suggestion, the chair request Mr. Dabney to read his report now, action, of course, being withheld until this report is passed on.

**THE PRESIDENT:** I think that will help us, and without putting the motion I will ask Mr. Dabney to read his report.

**JUDGE WEAR:** If we strike this out, to that extent this Association has gone on record.

**THE PRESIDENT:** Mr. Dabney's report will not be before the house. It will only be read for information, and in connection with this discussion.

**JUDGE WEAR:** That is the point I am making with reference to the impropriety of striking it out of this report. If it is struck out, we have no assurance then that, even if the other report contains this idea, it will be adopted, but if anybody is disposed to contest it, he would go into the fight on the adoption of that resolution with the prestige and the power that would come from a victory, whatever it may be, with reference to this, and so far as I am concerned, I am not in favor of this Association going on record one minute in a way to convey the supposition or leave the inference that it is not in favor of the sentiment expressed in the resolution read by Mr. Smith.

**MR. SMITH:** I think I can straighten this out. There was a question in the minds of the committee last night as to whether, in placing that last clause in the resolution, we were not trespassing on the territory covered by Mr. Dabney's committee; and in behalf of the committee, if there will be no objection, while we of the committee signing the report endorse every word in there, we ask leave, in view of the fact that we are perhaps trespassing on the ground of another committee, to be allowed to cut out that last clause, that is now objected to, on the ground that it does not come within our jurisdiction.

**JUDGE WEAR:** I will be perfectly agreeable to that suggestion, if the committee ask to withdraw the resolution, and let them present it in the other form. Otherwise, the inference might go out that this Association in some way has refused to endorse the idea. I do not care anything about the opportunity to express myself, but I want to avoid, if I possibly can, this Association's going on record or leaving the inference that it does not endorse the sentiment expressed in these resolutions.

**THE PRESIDENT:** It occurs to the Chair that not only yourself but every other man in this Association, who has a feeling upon

this matter, ought to express himself, and express himself clearly, because I think, as Mr. Moseley points out, it is a matter that may do injustice and ought to be carefully considered. Have your committee agreed that they desire this paragraph withdrawn?

MR. SMITH: We desire to withdraw the report, eliminate that sentence, and then submit it again for consideration, on the ground it covers territory we were not appointed to cover.

MR. BARWISE: Why can't we pass the action on this particular committee's report until we hear the other committee's report? I move that we postpone the consideration of this report until we shall first have heard the report of Mr. Dabney's committee.

MR. HARRISON: I move as a substitute that the committee be allowed to withdraw its report and submit it in the form it desires.

(Mr. Harrison's motion was seconded.)

THE PRESIDENT: The motion of Mr. Barwise, for which this is moved as a substitute, was that the other committee report be heard first. Mr. Harrison's substitute is that the committee be allowed to withdraw its report and make such changes in it as it sees fit.

The substitute motion by Mr. Harrison was thereupon unanimously adopted.

MR. SMITH: Now, with that clause left out, I think it is unnecessary to read it, we think it would be more orderly procedure and clearly within our jurisdiction. We have left out the last clause, leaving that as a matter to be covered by Mr. Dabney's report. The fourth clause of the report now reads as follows: "This Association hereby strongly recommends that those Texas lawyers who have charged registrants or their representatives fees or accepted compensation for services rendered or supposed to have been rendered, or who engage in such practice in the future, be expelled from this Association, if they be members thereof." It strikes out that they should be debarred from the practice of their profession, and it leaves the resolution standing that the lawyers who have accepted fees or compensation for

services rendered or supposed to have been rendered, or who engage in such practice in the future, be expelled from this Association, if they be members thereof.

MR. SANFORD: I suggest, merely as a courtesy to Mr. Moses, that he may want to sign the report now.

MR. MOSELEY: I move the adoption of the report as amended.

JUDGE WEAR: I move you, sir, that this report lay on the table until we hear and consider the report of the committee of which Mr. Dabney is chairman.

MR. MOSES: I second the motion.

THE PRESIDENT: The motion to lay on the table, having received a second, is before the house. It is not debatable. The motion is to lay this report of the committee of which Mr. Smith is chairman on the table, until the report of Mr. Dabney's committee has been heard and disposed of.

The motion to lay on the table was thereupon adopted.

THE PRESIDENT: The report will lay on the table until Mr. Dabney's report is heard. Mr. Dabney, we will hear your report.

MR. DABNEY: It will be recalled that our committee was appointed for the purpose of getting up some machinery to carry out the purposes of this Association. Our report is as follows:

"To C. K. Lee, Esq.,

"President of the Texas Bar Association.

"The undersigned, the committee appointed by you under the resolution adopted, report the following, and advise that it be adopted:

"(1) That this resolution, in connection with the resolution already adopted upon the suggestion of Major Townes of the United States Army, be published, if possible, in every newspaper of this State, and given the widest publicity.

"(2) That we consider it unethical for any lawyer to accept a fee in order to procure exemption from the draft, or a preferred classification, and that we consider that lawyers should charge no fee.

"(3) That all interested registrants be advised, when they

need legal assistance, to apply to lawyers of reputable character and standing, in accordance with the recommendation of the President that lawyers render this assistance gratuitously.

“(4) That by Article 325, of the Revised Civil Statutes of Texas; it is provided that lawyers shall have their licenses suspended, or be disbarred, who are guilty of fraudulent or dishonorable conduct, or malpractice.

“(5) That any lawyer who has accepted, or who shall accept, any fee, disproportioned to proper services rendered, plainly comes within the terms of this statute, is guilty of violating the statute, and of traitorous conduct; either deceiving the registrant, or his family and friends, upon the expectation that he will use his influence or corruption, or is plainly guilty of accepting a fee with that view, and should be disbarred. We denounce the acceptance of any fees whatever.

“(6) That this Association will lend its earnest aid to stamp out this practice, and to procure the disbarment of those guilty, and calls upon all its members and all respectable lawyers of the State to lend their aid.

“(7) That the President of this Association, as soon as may be, appoint, if possible, one or more lawyers in every county of the State, members of this Association or others, who will agree to act, but at least one lawyer for every Senatorial District, and others from time to time; and that the lawyers so appointed shall bring disbarments in all proper cases in State and Federal courts, co-operate with Major John C. Townes, Jr., draft officer for Texas (whose office is in Austin), and with his associates and successors, and with the secret service officers of the Government (who have collected much evidence), and all other officers of the National and State Governments, and with every patriotic citizen; and that the Provost Marshal General of the United States and all other authorized officials of the United States be requested to recognize, co-operate with, empower and authorize the appointees of our President in every legal way, and to bestow upon them the national authority, if possible.

“(8). That the President of this Association furnish General E. H. Crowder, Provost Marshal General, and Major Townes with copies of this resolution, and the names and addresses of all lawyers appointed by him.

“(Signed) S. B. Dabney, Chairman; H. P. Lawther, R. W. Rodgers, P. A. Martin, Allan D. Sanford, Committee.”

MR. DABNEY (continuing after reading the report): Now, as to the matter Mr. Moses brought up, we had that under very careful consideration. We finally reached the conclusion that while it was unethical and improper, and should be denounced by us, it would tend to defeat in some degree our purpose, possibly in the case of some lawyer ignorant of this matter, who had accepted small fees, if we insisted upon his disbarment, so, if you will pardon me, I will read that clause again:

(Mr. Dabney then re-read clause 5 of his report.)

MR. LAWTHER: I move the adoption of the report.

MR. DABNEY: The other report should be adopted first.

THE PRESIDENT: This (the Dabney report) is not before the house.

MR. PADDOCK: I move that the Cecil Smith report be taken from the table and placed before the house. Both reports will then be before the house.

MR. LAWTHER: I second the motion.

The motion was adopted.

THE PRESIDENT: Both reports are before the house for your action. Now,—Mr. Moseley, just a minute—I desire to call attention to the fact that in this fourth clause those who have charged for services and those who may charge for services are put upon the same basis. Now, without intending to argue this matter at all, for I do not mean to be in that attitude, I call your attention to the fact that there may be, and in my mind there probably is in many cases, a very marked distinction between men who may, unthoughtedly and without proper consideration, have charged some small amount for services rendered, and those who, in the light of resolutions of this kind and after the agitation of the matter, may hereafter do so.

MR. MOSELEY: I am heartily in accord with the spirit of the resolution, and I think this Bar Association ought to go on record as denouncing the taking of fees. I personally did a

great deal of this work, even to the extent of going to Fort Worth, and getting numerous affidavits on these agricultural claims. I never charged a cent. It was a pleasure to me to do it, and the fact that I made a motion to strike out that part of it I do not want to be taken by any member of this Association as evidence of the fact that I want to shield any action of mine. But I made that motion to strike out for the reason given by the Chair. Doubtless some lawyers in ignorance of the true scope of this matter have made charges for this service, and I thought it was a drastic resolution. I did not believe, and I do not believe, that it will meet with the general approval of the bar of the State of Texas, that we should go on record as disbarring a man, because he has, ignorantly, perhaps, in the past, accepted a fee for this work. The report with that stricken out expresses my sentiments fully. It goes so far as to say that they shall be expelled as members of this Association, to which I agree. It goes so far as to say that we condemn the practice as being unpatriotic and wrong, and that is as far as we ought to go, in my judgment. I believe that to put the further clause on it that they should be disbarred will weaken the resolution, not only here, but over the State generally. Now, the resolution as offered by Mr. Dabney modifies the matter a little bit, where it says, "if they charge unreasonable fees," or language of that effect. That does not meet my approval, because that opens a wide question as to what is a reasonable fee. I think that should be corrected to say that this Association goes on record as denouncing that practice, and that any member of this Association who does it will be eliminated from further membership in this Association. I believe we ought to do that, but I do not believe it is within our province or that we should go further and say that they should be disbarred from the practice of their profession in this State. That is going too far. That is liable to be a drag net that will probably take in some innocent lawyers, who have made some small charge in times past, in ignorance of the effect of their action in making this charge. So I think, gentlemen, that the resolution as adopted, showing our sentiment fully, showing that this Bar Association is on record as denouncing that custom and that practice, is just as far as we ought to go, and then make a resolution to the effect that if they continue

that practice in the future, then we will have a committee that will see that they are disbarred from further practice in the State. I am heartily in favor of that, but I do not think we ought to take action further than that. Mr. Moses expressed my sentiment exactly with reference to that. So the resolution offered by Mr. Dabney, I think, ought to be modified, so that it will show that we denounce the taking of fees, whether they be small fees or large fees, but I do not believe it ought to go to the extent, up to this time, of disbarring anybody for what they have done, but let it be understood that if this thing is done in the future this Bar Association will take the matter up and see that they are disbarred from further practicing their profession before the bar of this State.

MR. MARTIN: In this first resolution it provides that if he has taken any fee at all he shall be expelled from this Association.

MR. MOSELEY: Yes, sir; I am in favor of that. The only thing I object to is to disbar, because, gentlemen, you can't do it.

MEMBER (name not obtained): Isn't the gentleman under a misapprehension when he states that this resolution reported by Mr. Smith provides for any disbarment at all? It is the resolution reported by Mr. Smith's committee that is under discussion at this time, is it not?

MR. MOSELEY: Both of them.

MR. KIMBROUGH: Let us have the question on Mr. Smith's resolution. We have been going on with a discussion without anything before the house.

MR. DABNEY: I move the adoption of Mr. Smith's report.

MR. JONES: I second that motion.

MR. MOSELEY: That meets with my approval.

MR. SMITH: Our committee is in this attitude. We report a resolution. You told us what resolution to report, and we did not have as much latitude as a committee ordinarily has. You gave us a resolution and told us to bring it back with certain changes, which we did. Now, I have thought a great deal about



the proposition that we have under consideration, having been mixed up with the draft matter in a good many capacities during the last year. We made that report, but I fear that we are losing sight a little bit of all the angles involved in the matter. In the first place, when the selective service law was adopted, we did not have the rules and regulations that we now have, but we did have some selective service regulations. At that time we did not have any questionnaire. The President had not called on the lawyers to assist in preparing these blanks that were furnished to registrants to get discharges and exemptions, etc. All of the War Department matters I have found are enveloped a good deal in red tape, and the average registrant did not have any conception in the world of how to fix a great many of the documents that were handed him to fix to get deferred classification, for instance, on the ground of a dependent wife, or on the ground of vocation, or other grounds. The procedure then was simply to hand this man the papers and tell him to fix it up. The lawyers had not then been drafted by the President for this work. I do not think that at that time, or now, or at any other time, the lawyers ought to have charged any fees to these registrants. I think the effect of charging was a pernicious effect. I think, further, that the right-thinking lawyer feels that it is a small part of our duty, in raising this army, to do anything that we can to help the Government in raising the army. At the same time, I have thought that possibly under the old regulations there might have been some lawyers who charged small fees for services rendered at that time, who ought not to be very severely censured for doing so.

MR. W. N. BONNER: What service could a lawyer have rendered to a registrant up until the time the questionnaires were sent out, and at the same time the lawyers throughout the country were appointed to fill them out?

MR. SMITH: This service. About from the first of August they were called for service—not all of them, but a great many of them—and the first draft was filled by men before the questionnaires were ever considered or issued, but at that time they were entitled to the same vocational exemptions and discharges that they are now. For instance, a man had a good agricultural claim. He was entitled to present that then, and that went to

the district board then, as it does under the new regime. He may have had a good vocational claim. I will give you an illustration. I know a young man that was called for service under the old rule. He was a chemist of several years' experience. His business was superintending the mixing of compound lard, which is made of cotton seed meal and—I do not know just what goes into it, but I think some tallow or beef fat. There is some skill required in mixing it. The concern he worked for claimed that they were unable to supply his place, that it had taken him five years to learn how to do that business, how to determine the character of oil and fat and other ingredients that went into it. Now, if he were just to come in and say that he was a mixer of oil and fat for that concern, nobody could intelligently pass on his claim, and the lawyer took several hours' time in preparing the exact facts in that case. I do not think that that lawyer charged anything for that service, but under the old regime nothing was said about the lawyer's doing the work free. The President had not requested the lawyers to work for nothing, and if the lawyer had gone out and fixed those affidavits and charged a fee of ten or fifteen dollars for his services rendered, I do not think he should have been censured very severely for that. I think the effect of it would be bad, but I can see how men could do that innocently. So it occurs to me that a distinction should be made between the status of the lawyers before the President drafted them into the service and the status of the lawyers since that time. I do not think anything does more harm than the fact of lawyers taking fees in connection with this selective service law, but it occurs to me that possibly there ought to be a distinction made between the old rules and the new rules in that regard.

MR. W. N. BONNER: In line with Judge Smith's suggestion, this has occurred to me: I do not see how any lawyer, since the President called on us all to contribute our services free, could go out and justify himself for making any charge, but this is what I had in mind: It is proposed to adopt a resolution which provides that where a lawyer has accepted any fee he shall be ousted from this Association. He shall lose his membership in it, but he is not otherwise censured. Now, what is this Association for? Is it to help each other and keep the body clean, or is it

to look after the profession and keep clean the lawyers of Texas? I say that a lawyer who is not fit to belong to this Association is not fit to practice law in Texas, and I move to amend that resolution so as to provide that any lawyer who has accepted any fee since the date the President called on us to give this service free, who has received any remuneration since that time, shall forfeit his membership in this Association, and in the language of this resolution, should be disbarred. Of course, this Association cannot disbar a lawyer. We know that. There is grave doubt in my mind, after what I have heard said here, and from what I know about the law, as to whether that would constitute sufficient ground for disbarment, but it is sufficient for us to say that he should be disbarred.

(There was no second to the motion.)

MR. JONES: I suggest that we are getting right back to the tangle from which we have just extricated ourselves. The very purpose of laying on the table Mr. Smith's report was to hear the report of Mr. Dabney. Mr. Dabney takes up the point you make, and as strongly as he can, condemns the practice. If it were not for the Dabney report, you would be correct about it. Now the simplest thing for us to do is to adopt the Smith committee report. It has now been put in such shape that in connection with the Dabney report, the entire action of this Association is clear, and as the adoption of the Smith report has already been moved, I call for the question.

JUDGE HAWKINS: I would like to ask a question or two for the purpose of understanding the situation. I am reluctant to take any part in this discussion, but I feel free to do so as an associational matter. I have waited hoping that some one else would call out the feature I have in mind. I do not know whether the committee has considered the question of putting this into operation or not. I do not think this is any war in which we ought to use blank cartridges.

MR. DABNEY: That is covered by my report.

JUDGE HAWKINS: I did not catch that it provided any plan by which our rolls are to be purged of offending members. I wanted to find out whether any machinery was provided by which our rolls will be purged. If these men are to be expelled,

we ought to know who they are, and the machinery ought to be operative, and their names ought to be dropped from the rolls of the Association, both as a punishment to them and as an evidence of our disapproval of their action, as a matter of simple justice to the great body of the lawyers of this State, who would not do these things.

THE PRESIDENT: I make this response to your question, Judge Hawkins. This particular report does not provide any procedure by which the facts may be ascertained, but Mr. Dabney's report does. His resolution is before the house, but there is no motion on it. I would suggest that the question you raise be thrashed out when the other resolution comes up.

JUDGE HAWKINS: If it is covered, that is an answer to my question. I did not catch it.

MR. G. N. HARRISON: Mr. President: It is a bit difficult to get a correct mental grasp of the situation, with both these reports trying to get into a man's mind at the same time. I think, if I have correctly digested the remarks of Mr. Smith, that he is not himself entirely satisfied with the fourth clause of that report, as it now stands. I have been a lawyer for over twenty years. I know that a man need neither lose his patriotism, nor any proper conception of the majesty of the law, by accepting a fee for legal services. The only thing that in my mind makes that utterly improper now, in this particular class of service, is that the President, the Commander in Chief of the army of this nation, has felt that for the perfect administration of the draft law in this time of war stress, it would be better that the relation of attorney and client, predicated on compensation, should not exist between the lawyer and the registrant whom he serves. Since that rule was promulgated, I think the lawyers, like the soldiers in the army, should bow to it and recognize it, and those who do not, have no proper appreciation of the situation that confronts them, and of their duties as citizens and as men, because they are effectually drafted into that particular branch of the military service, to perform that particular function. But I do not believe in the adoption of that report, if it is as broad as it seems to me to be, whether the language be in one or the other of these reports, that shall condemn and render a man

liable to expulsion from this organization, because perhaps before the President did draft us he may have charged a fee for the service, because he could have done it in perfect innocence, with perfect patriotism, and no one would have thought anything of it at that time. But the situation has utterly changed since the President promulgated his rule and drafted the lawyers to render this service without being reimbursed in the slightest degree, and asking that the relation of attorney and client predicated on compensation should not exist. So, I do not know how to make a motion, but I am thoroughly in favor of amending that resolution, so that it shall only condemn, either as subject to disbarment or expulsion from this organization, those who have accepted compensation since the Commander in Chief of the armies of this country, the President of the United States, promulgated that rule, asking us to give that service fee, and I move such an amendment to that clause of the report.

THE PRESIDENT: Isn't that in keeping, Mr. Smith, with your idea of the form the resolution should take, that it should only apply to those who have offended since the President called on the lawyers to assist?

MR. SMITH: That is the way I feel personally about it.

THE PRESIDENT: The motion is to amend your report. Is it satisfactory to the committee to so amend it without the necessity of a motion.

MR. MOSELEY: Isn't that matter fully covered in the report of Mr. Dabney, Mr. Harrison?

MR. HARRISON: I do not think so. That deals with another phase of the matter entirely.

MR. MOSELEY: You have got my idea exactly. I was opposed to a sweeping resolution that we disbar everybody for taking a fee, but I agree with Mr. Harrison that since the promulgation of that decree by the President, I would be in favor of disbaring lawyers who have taken a fee since that time.

MR. KIMBROUGH: Mr. President: I think it ought to have been evident to every man who has intelligence enough to be a lawyer that he ought not to have made a charge for assistance

he might render to registrants, before the President made his proclamation, or made his request, as well as since, and I do not think we ought to be over careful about getting this resolution strong. I am in favor of a strong resolution. Let me tell you, men, if you are not soldiers, all of you, behind the lines, in as true a sense as our men are on the front, we are not making progress towards winning this war. Now, let us do away with this talk about cheese-paring on this phraseology, and pass these good, strong resolutions, as reported by Mr. Smith. We will not carry it out any too scrupulously, and we will not hurt any man, and we will not do any injury to any worthy lawyer by passing that resolution and carrying that out. Now, if you will pardon me—I suppose I ought not to do it, in strict parliamentary law—but I would like to see this motion come to a vote, and I move the previous question on Mr. Smith's resolution.

MR. MOSES: I hope the gentleman will withhold that for a moment.

THE PRESIDENT: Mr. Harrison's motion to amend was seconded, I understand.

(The motion to amend received several seconds at this time.)

MR. MOSES: I want to put in writing the idea that Mr. Harrison had stated verbally.

MR. HARRISON: I want to add this one thought that escaped me. If there is anything abhorrent to a lawyer and his sense of justice, I have always understood it to be an *ex post facto* law. Now, we are about to pass here an *ex post facto* resolution, which condemns men for action done when no such resolution regulating our conduct was in existence. To my mind, it is utterly abhorrent. I do not like to talk much, and am not in the habit of doing it, but that particular matter, I think, would be utterly wrong, and I do not see why this organization will not reflect its true patriotism, its knowledge of the law and the fundamentals of the law—the Constitution itself of our nation—when it declines to adopt an *ex post facto* resolution expelling men from this organization, for something done when there was nothing in the law or the regulations of this Association requiring it. I think it puts itself on record as adding its whole force to the President's efforts to purify the military organization,

when it says that since we have been asked to serve for nothing, we condemn and expel every man who accepts pay for his services. I do not think we ought to go further.

JUDGE WEAR: What is before the house?

THE PRESIDENT: There is a motion to adopt the Smith resolution, and a motion to amend the fourth clause of that resolution, which is being reduced to writing at this time.

JUDGE WEAR: The trouble about the point made by my friend, Mr. Harrison, is that the doctrine of *ex post facto* law does not apply in this instance, because the adoption of this resolution, if adopted, is the expression of the wish of this Association as to what ought to be done with a fellow that has already stolen a horse, when he knew when he stole it that it was wrong and unprofessional. It is not a question of passing a law here that would make a thing illegal and have a retroactive effect, but it was illegal and improper and disloyal and unpatriotic and unprofessional when it was done. That is the trouble about it. It is not a question of this organization's adopting a law or a rule, which, if violated, would make it illegal or unprofessional. It is a question before this house now of saying as to whether we are in favor of putting the screws to the fellow who has dishonored the profession. That is the proposition. And I am not in accord with the sentiment expressed by my friend Judge Hawkins, either, as to the question of shooting a blank cartridge. I do not agree with him on that proposition.

JUDGE HAWKINS: Won't it be blank, if you don't name the men? If not named, whom will you hit?

JUDGE WEAR: It is not for this organization now to name the men. The question is whether this organization will express its sentiments. And when you talk to me about a positive, unequivocal statement of a sentiment and idea by this Association being a blank cartridge, I do not agree with you.

JUDGE HAWKINS: May I ask you a question?

JUDGE WEAR: Yes, sir.

JUDGE HAWKINS: Unless your machinery reaches the man who is guilty, unless the machinery designates the man who is

guilty, not by naming him now in this resolution, but by providing a method by which he can be named and his name stricken from the rolls of this organization, will not your cartridge be blank? I say yes.

JUDGE WEAR: I say NO! (Laughter.) If I thought the unequivocal expression by this Association had the effect of a blank cartridge, I would be in favor of disbanding the thing and going home.

JUDGE HAWKINS: Will you permit me to say this? I simply want a method by which we could look at the rolls and say who are members and who are not members. I will ask you this: Who will be expelled by your resolution, if it does not provide for this machinery?

THE PRESIDENT: The Chair is going to rule that this discussion is out of order, because the question of the procedure is not now before the house. The question of the declaration of the will of the Association is before the house.

JUDGE WEAR: I did not hear you. I think I have a right to understand what the President rules.

THE PRESIDENT: My ruling is that your and Judge Hawkins' discussion is on the question of procedure, and the question before the house is the question of the declaration of principle, and not the method of procedure to put it into effect. That is covered by Mr. Dabney's resolution, which is not before the house.

JUDGE WEAR: I was just going to say to the Association, if you will permit me—

THE PRESIDENT: The Chair cannot permit it, because it is out of order.

JUDGE WEAR: All right. I will not then state to this Association that I was going to say that that was a question that will be applicable to the other resolution, because the Chair will not permit me. (Laughter.)

THE PRESIDENT: You are thoroughly qualified to practice law, sir. (Laughter.)

JUDGE WEAR: But I want to say this: It is not a desire on my part either to air myself or to express my views—where is



Cecil Smith?—but I simply want this Association—not me, but this Association—to emphasize its condemnation of any such practice, and I do not understand that it is the business of this Association to undertake to pussyfoot and defend a fellow who says that he is a member of the legal profession, and has not got sense enough to understand his duty with reference to this kind of a question, and if he has got sense enough to understand it, he violates his duty. That is my position, and I say it would not only do no harm to adopt this resolution as it appears upon the paper, but that it will be effective, and tend to place this Association and the members of this Association in the right light, and in the position that they ought to occupy before the world, and in the eyes of the President of the United States, upon whose shoulders is a great burden, and who has requested the members of the legal profession to give their services, to the end that the bloody hand of Prussianism may be lowered in unconditional surrender.

MR. MOSES: I have reduced this clause to writing, using in the first part of it the exact words of Mr. Smith's report:

"This Association hereby strongly recommends that those Texas lawyers who have charged registrants or their representatives fees, or accepted compensation for services rendered or supposed to have been rendered"—here is the new part of it—"since the President's proclamation calling on the lawyers to assist the registrants without charge or who engage in such practice in the future, be expelled from this Association, if they be members thereof."

MR. SMITH: If the President of the Association will permit me, I have a suggestion covering the same line, that I would like to submit in connection with it, expressing the sentiment denouncing the practice at all times and any times, and winding up with this recommendation, which I will read. The fourth clause as it now stands reads:

"This Association hereby strongly recommends that those Texas lawyers who have charged registrants or their representatives fees, or accepted compensation for services rendered or supposed to have been rendered, or who engage in such practice in the future, be expelled from this Association, if they be members thereof."

In lieu of that, keeping the sentiment heretofore expressed, I make this recommendation:

"Fourth: This Association hereby recommends that those of its members who hereafter charge registrants or their representatives fees, or accept compensation for services rendered, or to be rendered, be expelled, and that they should be debarred from practicing their profession."

This eliminates any ex post facto feature of the resolution, keeps the sentiment as to past conduct, but simply recommends the penalty as to future conduct of the members of the Association.

THE PRESIDENT: Is it the will of the house that the committee be allowed to amend their resolution?

MR. SANFORD: I move they be so permitted.

MR. HARRISON: I think we can withdraw ours, maybe, if you will read it all.

MR. MOSES: Mr. President: To answer a suggestion made by some one, will you kindly read section three? I think there is just as strong a denunciation of charging fees as could be composed in section three.

The President then read sections three and four, as follows:

"Third: This Association hereby denounces as unpatriotic, against professional ethics, and beneath a decent lawyer, the practice by a few Texas lawyers of charging or accepting from registrants or their representatives, fees of any amount (whether large or small) for services in connection with their classification, or in any wise appertaining thereto. The contractual relation of attorney and client should in no event exist between a Texas lawyer and a registrant or his representatives in so far as the enforcement of the selective service regulations are concerned, except in cases arising in the courts.

"Fourth (As amended): This Association hereby recommends that those of its members who hereafter charge registrants, or their representatives, fees, or accept compensation for services rendered, or to be rendered, be expelled, and that they should be debarred from practicing their profession."

THE PRESIDENT: If there be no objection, the committee's report will stand as last read.

MR. MOSELEY: And I second the adoption.

MR. T. S. HENDERSON: Do you mean to say by that, that the amendment as just offered by Mr. Moses is also adopted?

MR. MOSES: No. That is withdrawn, with the consent of the second.

MR. HENDERSON: Does that condemn the practice that has been indulged in heretofore, or does it merely attempt to say that they must not do it in the future?

THE PRESIDENT: It does both, as I understand the two provisions I have just read. The third section condemns in the very strongest terms the accepting of any fee.

MR. HENDERSON: We ought to go back at least to the time when the President drafted these lawyers into this service. It ought to go back that far.

JUDGE E. B. PERKINS: Mr. President: It seems to me that we are losing sight of one fact in this matter of trying to protect men who have done something in the past through ignorance, or carelessness or thoughtlessness. When this people declared war against Germany, there was a declaration of war by the people. When this people, through the Congress, passed the selective service law, it was the act of the people. Now, no man, in my judgment, under that state of facts, being an American citizen, could enter into contractual relations with, and receive compensation from, a man within the age of the selective service law, for the purpose of securing him a position that deferred his service to his country, and my opinion is that to claim that for the lawyers would be a mistake.

MR. KIMBROUGH: I think so, too.

JUDGE PERKINS: It is not the practice of law. It is the use of professional skill and knowledge in aiding a man in getting a position under the selective service law that he desires to occupy, in order to defer the time or the date of his service. It has no character of connection with the practice of law. And whenever and wherever a man has done that, he has forgotten, in my judgment, his obligations as an American citizen. (Applause.) And any man who has forgotten, since we declared war, his obli-

gations as an American citizen, in my opinion, is unworthy to be a member of this Association. (Applause.) Properly, therefore, in the third paragraph of the report made by Mr. Smith, the committee denounces in unmeasured terms such action, and then to adopt the fourth resolution as now proposed, would be to denounce the man as being unworthy of an American citizen, and still the man who had done that could remain upon the rolls of the great Texas Bar Association. I say to you, with that utmost conservatism, and with the utmost charity for a man who has made that mistake, that I do not want him to remain. (Applause.) Now, the Dabney report, it seems to me, is carefully prepared and covers the question, and expresses the opinion of the Association. And in that connection I want to correct Mr. Moses—and I am always careful about attempting to correct a statement of Dayton Moses, because he is one of the most correct men I have ever known. But I read with much interest and with a great deal of care the published report of the charge of Judge Batts to the grand jury. I hold him in the highest esteem, as a man, and a lawyer and a judge. I noticed how carefully he had chosen his words, and he said that charging the reasonable value of the services, while it would be an unpatriotic act, might not be a violation of the law. He was careful to qualify it, in other words, with the proposition that it might be, and we know what he meant when he said that it would be an unpatriotic act. Now, I do not want a man in this Association who has been guilty of an unpatriotic act. I had thought that I would not say anything on this occasion, but I do not like the idea of simply making what we do apply to what may happen in the future. (Applause.)

**MR. HARRISON:** Mr. Chairman: When one permits himself to be drawn into a debate in a matter of this character, it is difficult sometimes to get out.

**THE PRESIDENT:** There is nothing before the house but the Smith report as amended by the committee, and unless you are going to speak to that—

**MR. HARRISON:** I am going to make a mere explanation, purely personal. I have not taken the privilege before to say that I have had to be closely connected with the administration of the

selective service law, being chairman of the legal advisory board of Brown County. I have given it as careful thought as I am capable of. The very purpose of the selective draft is to create an industrial army, as well as an army on the firing line. The implication that a man is doing a wrong thing, an unpatriotic thing, or a thing for which this Association should condemn him, as broad as it may be drawn from Judge Perkins' able remarks, is in my judgment wrong. The claims that have given me concern, and all the lawyers in Brown County concern—and Brown County is not condemned in the report of Major Townes, I was glad to see—have been that class of industrial claims that determined whether or not a man had meritorious cause to be kept in the industrial army, and whether it was better for his country—for his country solely, and not for him—that he be kept in the industrial army, in the agricultural occupation or industrial occupation, in order that the production of that which is necessary to strengthen the sinews of war should be kept up in this country. It is that class of claims that has concerned lawyers under my jurisdiction. It is that class of claims, and that only, so far as I know, that has ever called for legal treatment. The only trouble I find with this resolution is that it does not condemn as far as the amendment did, which I withdrew, because the other seemed to meet with the sentiment of the Association. It relieves all, though they have pursued this practice since the President promulgated this rule. Mine condemned those that had since, but did not condemn those that had before. Because it seemed to be the sense of the Association, in order to get rid of it, I withdrew that amendment.

MR. HENDERSON: I want to ask for the second reading of the amendment that has been offered. (The fourth clause as last read by Mr. Smith was read.) I will offer a substitute for that amendment.

MR. KIMBROUGH: May I ask a parliamentary question here? This committee brought in a report, and then the committee itself proposes to amend the report. Is not the proper order now for that committee itself to move an amendment to its report?

THE PRESIDENT: That is proper unquestionably, but to facilitate this matter the Chair asked the question if there was any

objection to their being allowed to amend it without a formal motion, and there was no objection, and therefore it stands before the house as amended. I did not go through the form because it was a matter of facilitating it. Now, this is an important matter, and it is the desire of the Chair that this house shall express its sentiment on this matter. While these clauses have been read over two or three times, I want to call your attention to the three forms in which the matter now stands. There is the first form in which it was submitted: "This Association hereby strongly recommends that those Texas lawyers who have charged registrants or their representatives fees, or accepted compensation for services rendered, or supposed to have been rendered, or who engage in such practice in the future, be expelled from this Association, if they be members thereof." That is an unqualified expulsion, if they have been engaged in the practice.

Then there was the amendment suggested by Mr. Harrison, which is not before the house, but has been withdrawn, to the same effect, only limited to those who have charged, since the President's proclamation calling on the lawyers to assist the registrants without charge.

Then, and the only thing that is before the house now, is the substituted clause four of the committee, which makes the punishment of expulsion from this Association only apply to future acts.

MR. HENDERSON: I offer the following substitute for clause four:

"We further recommend that any lawyer who has charged a registrant a fee for services in an attempt to have the registrant placed in a deferred classification, since the President by proclamation called upon the lawyers to assist registrants, be expelled from this Association, and that we recommend that any lawyer who hereafter charges a fee to a registrant be disbarred from the practice of law in this State."

I do not think there is any question but what a lawyer ought to be condemned who has charged a fee since the President issued his proclamation drafting the lawyers into the service to help these registrants, and the purpose of this amendment is to make it date back to the time when the President issued that

proclamation. I move, Mr. President, that that substitute be adopted.

(The motion was seconded.)

MR. DABNEY: I have just a word to say. For these gentlemen to limit the position of this body to the future, to disbar in the future, will let out, to the best of my information, some of the biggest scoundrels that disgrace the bar of Texas, that have done this in the past. I am not talking about the little fish. I do not like the words "in the future," from this Association, or anywhere else.

MR. LAWTHER: I thoroughly agree with Mr. Dabney. What did we hear yesterday? Major Townes told us yesterday that there was positive information in the hands of his department that some lawyers of this State had received, and they have got the canceled checks, as much as \$5,000 for performing a service that probably the registrant could have obtained without the aid of any lawyer at all. If that man, whoever he is, be a member of this Association, the adoption of the report as it stands today would condemn a man in the future that would charge \$500, and not the scoundrel that got the \$5,000. He would still be a member of our Association and entitled to sit in our meetings.

THE PRESIDENT: I do not think you understand the substitute.

(The substitute offered by Mr. Henderson was read.)

MR. LAWTHER: I agree with Judge Perkins. I go back beyond that time. If he is a member of this Association, even before the President called upon the lawyers, I agree with Judge Perkins that he had no business to enter into a contract with a man in the draft age for money.

THE PRESIDENT: You gentlemen will have to make your motions to amend.

MR. LAWTHER: I offer as an amendment to the report as it now stands the language of section four as first offered by the committee.

THE PRESIDENT: Do you mean to substitute for the amendment offered by Mr. Henderson clause four as originally read?

MR. LAWThER: Yes, sir.

(Mr. Lawther's motion was seconded.)

THE PRESIDENT: The question then before the house is a motion to substitute for Mr. Henderson's amendment the language of the fourth clause, as originally submitted by the committee.

The motion was adopted.

THE PRESIDENT: Are you ready for the question now on the amendment to the report, Mr. Lawther's amendment, taking the language of the fourth clause as originally submitted, in place of the substitute clause as submitted by the committee?

The question was called for, and Mr. Lawther's amendment was adopted.

THE PRESIDENT: The question is therefore before the house on the original report of the committee. Is there any discussion of that report now?

MR. HENDERSON: I want to ask the members of the Association just to bear with me for one minute, until I can make an explanation. I have always been in favor of the resolution just as it was written originally, but I supposed that had been stricken out already, and the language of the substitute as offered by some gentleman over there I did not think was strong enough, and I am trying to get back just a little nearer the original resolution.

THE PRESIDENT: The question now is on the adoption of the Smith resolution, as now amended, being the report as it was originally submitted.

The motion to adopt the Smith report as amended was then carried.

MR. KIMBROUGH: Now that adopts the Smith report just as it was brought in here, does it not, with the disbarment words cut out?

THE PRESIDENT: Yes; with the disbarment words cut out. Now the report of Mr. Dabney's committee is before the house. What will you do with it?

JUDGE WEAR: I think that the chair is a little incorrect in saying that is the original report with the disbarment proceeding



cut out, because as a matter of fact the committee withdrew it, and, therefore, it is the original committee report.

THE PRESIDENT: Yes; we understand that.

The adoption of the Dabney report was then moved and seconded.

JUDGE HAWKINS: I ask the Association to excuse me from voting, because I do not know how far that resolution may extend.

THE PRESIDENT: I am sure that any part of it will be read to you.

JUDGE HAWKINS: I mean that because of my official position I should rather not vote on it. There might be a unanimous vote on it, in which I would stand as voting for it. I want the Association to understand my position, and I ask to be excused from voting.

MR. CARRIGAN: In the Dabney report there is something said about the fee that they charged, and it sort of left an impression on my mind that there was a difference between grand larceny and petty larceny. I think that a lawyer that will charge one of those boys that are going to the front a fee—I just look on him like he was, you know what. I can not use diplomatic language. My mouth is not attuned to that kind of talk, and I, therefore, will omit a diplomatic declaration.

MR. SANFORD: I interrupt you only in the interest of time, because I think you misinterpret the Dabney report. The Dabney report does not say anything about a fee disproportionate, except as it may apply to the present law on the subject of disbarment. The Dabney report condemns absolutely the acceptance of any fee, from any registrant, under any circumstances.

MR. CARRIGAN: I do not want it to go out as if we had said that a fellow that just took a small bribe for his services ought to escape. I do not make any distinction between a man that takes a small bribe and a big one.

MR. SANFORD: As Judge Batts expressed it, there is perhaps now no law under which a man can be convicted of a crime in Texas for having accepted a fee commensurate with the ser-

vice rendered. In our opinion there is no law now which would warrant disbarment because of the acceptance of a fee, under some circumstances.

MR. RODGERS: For proper service.

MR. CARRIGAN: It says, "accept any fee disproportionate to the service rendered."

MR. RODGERS: That only refers to where we are going to act on disbarment proceedings.

MR. DABNEY: The fifth clause reads as follows: "That any lawyer who has accepted, or who shall accept, any fee disproportionate to proper services rendered, plainly comes within the terms of this statute, is guilty of violating the statute, and of traitorous conduct; either deceiving the registrant or his family, upon the expectation that he will use influence or corruption, or is plainly guilty of accepting a fee with that view, and should be disbarred." We denounce the acceptance of any fee whatsoever.

Thereupon the Dabney report was unanimously adopted.

MR. ESTES: Mr. President: The board of directors, in order to facilitate and get things out of the way for the committee report that was to be featured as the main thing of the meeting, suggested the propriety of having the election of officers follow at this time; but it developed that the Constitution requires the present officers to hold until their successors are elected. In view of the fact that the present officers have charge of and should preside at this meeting, with the concurrence of the Association we will withdraw the recommendation, and proceed with the regular order of business, since the Constitution requires, in order to amend it, that a month's notice must be given.

THE PRESIDENT: The next order then, under the program, is the report of the special committee.

MR. GEORGE THOMPSON: I find I have to leave tonight, and I desire to present a motion, which I am sure a statement of which will be an apology for interrupting the regular proceedings.

THE PRESIDENT: I will entertain the motion on the condition that I am sure if I did not entertain it you would go anyway.

MR. THOMPSON: I have a telegram that calls me away. Gentlemen of the Association: Some months ago I read an article in one of the leading law journals, written by a patriotic lawyer, calling attention to the service of lawyers in all of the wars of our country. It is needless to say that from the days of the Revolution down to the present the roll call was the roll call of honor. This magazine added a note to this article, the editor saying that he was so much impressed with it that he would undertake to publish a list, if furnished, of all the lawyers who have been engaged in this present struggle. Struck with the idea, I contemplated and undertook to get up a roster or list of the lawyers of Texas who had entered the service of the United States. I desisted before the completion of same for the reason that I found they were constantly entering the service, and, therefore, it would necessarily be incomplete. After giving the matter further consideration I concluded that any action we took ought to go further, because there were a number of our splendid young men who had contemplated entering the service, but who were called from the class room and from the lawyer's office before they had had opportunity to enroll themselves as lawyers. I, therefore, desire to offer a motion that the President of this Association appoint a committee of ten, whose business it shall be, between now and the next meeting of the Texas Bar Association, to obtain a full list, showing the name and the department of service, of all the lawyers of Texas, and of all the sons of lawyers of Texas, who have, or shall by that time, have entered into this glorious struggle. I believe that a report of that kind, properly obtained, should be filed at our next meeting, in order to be put of record upon the minutes of this Association. I believe that in thus honoring ourselves as lawyers in preserving these records, we do ourselves still greater honor in a tribute to these lawyers and the sons of lawyers, as a mark of our appreciation of those splendid fellows who have the courage to dare and to die. I, therefore, move the passage of the resolution.

MR. BONNER: I second it.

JUDGE PERKINS: I think Mr. Thompson will agree to add to that "lawyers and sons of lawyers and students at law."

THE PRESIDENT: I take it you will list them separately, law-

yers, sons of lawyers, and students at law, who have entered the military or naval service of the United States.

MR. BRIGANCE: Wouldn't it be well to enlarge that committee, one for each Senatorial District?

MR. THOMPSON: I accept Judge Perkins' amendment. I believe a committee of ten, by organizing and working out a plan, can handle the matter satisfactorily, without tying them down to any method of procedure. My idea would be that this committee of ten would divide the counties up, and each one take one-tenth, and take it up directly with the bar of each county, and let them send copies of the roster and get it corrected up to the time of making the report.

MR. KIMBROUGH: I suppose it would be included, but it might be well to specify also the sons of judges.

MR. THOMPSON: Well, they are lawyers.

MR. KIMBROUGH: But a county judge is not required to be a lawyer, and a great many of them are not.

THE PRESIDENT: He would not be included in the resolution.

MR. THOMPSON: Then I accept the amendment.

JUDGE WEAR: If he is not a lawyer, then he is not entitled to that honor.

MR. THOMPSON: No; if he is not a lawyer I do not think he should be entitled to it, and I do not accept the amendment.

MR. KIMBROUGH: I withdraw the suggestion.

The motion was thereupon unanimously carried.

MR. THOMPSON: Due to the fact that I made the motion the chairman might be inclined to think of my name—

THE PRESIDENT: You need not discuss that. You are chairman of the committee. (Laughter.)

MR. THOMPSON: I am a little old (laughter), and have a great deal of work to do. I want to suggest as chairman of that committee Mr. A. H. McKnight, of Dallas. I do it without consultation with him. He is a university man, a lawyer, a young man of energy and enthusiasm, and I do not know of any man who

is more capable of taking great pride in organizing this committee and seeing it is kept up to date. I, therefore, move that Mr. A. H. McKnight be made chairman of that committee.

THE PRESIDENT: You have heard the motion that Mr. McKnight be made chairman of that committee.

MR. HENDERSON: The original resolution provided for the appointment by the President.

THE PRESIDENT: If left to the Chair, the Chair's opinion is that Mr. McKnight will make a most efficient first assistant to Mr. George Thompson.

MR. THOMPSON: I will accept the chairmanship if you will appoint Mr. McKnight as first assistant.

MR. BARWISE: I make the point of order that the motion leaves the appointment to the President.

THE PRESIDENT: I do not think a man who would suggest that patriotic idea ought to so far forget the proprieties as to undertake to control the Chair in the exercise of his duties. The Chair will yield gracefully, however, to the coercion, and will absolutely swear by all that is good and holy that he will appoint Mr. McKnight first assistant, and do it with the greatest pleasure. The other members of the committee will be thought out carefully and appointed by morning.

As the discussion of this special report will probably take some time, it occurs to the Chair we had better have the special report read.

MR. MARTIN: I take it everybody here has read and studied that report, and I believe I will make a motion that we dispense with the reading of it.

MR. LAWTHER: I second that motion.

The motion was carried.

THE PRESIDENT: The report is before the house without being read. It is getting on towards five o'clock. We have a good deal to do tomorrow, but we have been in session since two o'clock.

A motion to adjourn until nine o'clock a. m., July 5, 1918, was made, duly seconded and unanimously carried.

## MORNING SESSION—JULY 5, 1918.

The Convention was called to order at 9 o'clock a. m.

Mr. Estes nominated for membership Mr. E. T. Brooks, of Anson, and H. G. McConnell, of Haskell, who had been passed on by the Board of Directors, and moved their election. The motion was duly seconded and unanimously adopted.

THE PRESIDENT: The matter before the house at this time is the consideration of the report of the Special Committee, reading of which has been waived, as it has been circulated and generally read.

MR. ALLAN D. SANFORD: Mr. President, I move that the Association recommend to the Legislature the adoption of the joint resolution, as set out in the document prepared by Mr. Dabney, and furnished to the Association in printed pamphlet form.

(The motion was seconded.)

MR. W. L. ESTES: Don't you think it would be better for Mr. Dabney to succinctly state that? We have had this pamphlet here, and it has been in the midst of the meeting here, but I suppose there are some of us who have not had time to give it consideration.

THE PRESIDENT: I take it the purpose of this motion is to bring the report before the house.

MR. SANFORD: Mr. Dabney is about to do that now.

MR. DABNEY: Gentlemen, I will endeavor to be as brief as possible. A number of you know the history of our efforts in this regard. In 1912, during a vacation in Canada, I endeavored to make some study of the Canadian system, particularly in the Province of Toronto. Perhaps "study" is too serious a word. I endeavored to gather information. I have made such study as I have been able to do of the English unit system, as Dr. Pound calls it, or the collegiate system, the adoption of which is absolutely essential to bring about a system by which all the wheels of the judicial machine may be co-ordinated, and through which there may be a judicial administration, without which it is impossible to expedite the administration of justice.

Perhaps some of you will remember that the bill before you,

in the greater part, its broader parts and principles, but much changed in many particulars, was submitted to the Senate of Texas about 1913 or 1914, and was passed by the Senate with only three dissenting votes, but failed in the House, where it was not earnestly pressed. A subsequent effort was made to bring it about in the Senate without success. The Law Association of the University of Texas, of which Mr. Kimbrough was and perhaps is president, then discussed the matter extensively, and it was recommended in principle for the consideration of the Bar Association by the University Association.

Since the first draft of this matter the attention of some of us was attracted to the essays and addresses of Dr. Pound, who is with us today, upon this subject, by which we have endeavored to profit. As far as we thought we could, we have adopted his suggestions in the bill in the resolution now before you. At the last meeting of the Bar Association there was a debate, and it was agreed that Dr. Pound should be invited to address us upon this subject, which he has so kindly done. Two steps were taken: First, to secure an address from Dr. Pound, and, second, a committee was appointed to revise and bring forward a joint resolution. That committee never was altogether gotten together. Mr. Garwood and myself only of that committee make a report. Mr. Garwood agrees to the principle of it. He thinks that the collegiate system, or system self-functioning, is the only possible system. He disagrees with me as to the advisability of bringing it forward at the present time.

Now I shall endeavor to state to you only its main features, as I trust the majority of you have read it, and I will be very brief. The great purpose that we have had in view is to improve the personnel of our judiciary. We realize that not only justice requires it, but also that it is impossible to do anything unless all of the present judiciary substantially are provided for in this resolution. We think that our judges do not have a fair opportunity, and that the same personnel under a better organization would do immensely better. Also we have had in view, because it comes within the judiciary article of the Constitution—whether it belongs there or not—the situation of the county officers, and we have endeavored immensely to better their situation. We considered that taking care of the judiciary and the county officers and improving the compensation of the

judiciary by the minimum salaries we have fixed—more handsome than their present ones—is not in contradiction with the interest of the taxpayers, but is co-ordinated with them, and we think that the project makes for a vast economy from the taxpayers' point of view.

Now, in the briefest possible outline, we propose to abolish the Courts of Civil Appeals absolutely, taking care of all the judges in the new organization. That wheel we want to throw away. Our ideal is one trial and one review, and such a system that any litigant may reasonably expect within less than a year from the time of the institution of his suit to reach a final disposition, unless the case is reversed. That wheel we throw away—or those nine wheels.

The justice courts, commencing at the bottom now, we propose to abolish absolutely, and have one stipendiary magistrate in each county. We prohibit every judge and every judicial officer from being paid anything out of fees. This magistrate shall have the present jurisdiction of the justice of the peace in criminal matters, and no civil jurisdiction whatever. We provide that his salary shall be fixed by the commissioners' court, and that the commissioners' court can enlarge, if they deem it necessary, the number of those magistrates, as we call them. We have no sympathy whatever, gentlemen, with the idea so prevalent in Texas, for it comes to that: Ignorant man, ignorant judge to try his case—Poor man, poor judge—Little litigant, little judge. That we propose to abolish absolutely. We consider that however small a litigant may be, or however small the amount involved, he is entitled to an adequate judge, and we have kept it in mind from the beginning to the end to abolish the increasing pest of small courts.

As to the county court, it is proposed to abolish that absolutely, preserving the jurisdiction of the present county judges as probate judges to the end of their terms, and for the same purposes.

Now that throws the great mass—the exception I will state in a moment—of litigation other than probate matters, into the district courts, as courts of first instance. We realize the difficulties that will arise out of doing that, unless we provide an organization to permit those courts to self-function themselves on the collegiate principle, and to distribute their business. The



exception I state is this: After a good deal of consideration it was concluded that the district courts of a district could remit to the probate judge of any county the present jurisdiction of the justice of the peace, if they saw fit to do so, and made an order to be put upon the minutes of the district court. I will explain what the district is in a moment. Now for probate judge we provide for the appointment of a lawyer—not a county judge, as the Constitution says with a great deal of humor: “Learned in the law,” and who may be a blacksmith—in every county, not to be elected by the people, but to be appointed by the district court of that district, and to hold his court absolutely without term, and anywhere in the county. If the district court sees fit, or feels the need in some counties where the district court does not hold court very often, to provide for that situation. They may remit this jurisdiction which they have to him up to \$200.00 in civil cases not involving domestic relations, or land or slander and libel cases.

Now I come to the district court, our great court. We provide that all of the present members of our nine Courts of Civil Appeals, except the chief justices, shall become members of the district court, with improved salaries, I believe—at least without any diminution of their salaries; that if this constitutional amendment is adopted by the people the Supreme Court shall divide the State of Texas into not less than nine districts. They can create more if they wish. We provide that they shall assign to those districts all of the members of the Courts of Civil Appeals, other than the chief justices thereof, and all of the district judges who shall have their residence inside of the respective districts, as the Supreme Court shall lay them off, and they can adjust them from time to time; not less than seven district judges to be in any district, to constitute a branch of the general college of justice which we are endeavoring to set up; that the next election after the election for this year is abolished, and the term of every judge in the State is to be extended over two years to the next election of county officers after the impending election, if their terms end within the interval. Those district judges are to have this superintendence, as it is named, over the probate court. They are to be absolutely without limit, unless they remit it to the probate judge, in civil jurisdiction, and without limit in criminal jurisdiction, except such matters as

now come before the justice of the peace, and which are to be remitted to the stipendiary magistrate, one at least in every county—no limit whatever.' This branch of our college of justice in each district shall function itself in this way: Terms of court are to be abolished—the archaic nonsense. Of course, we will have to have rule days, but have no terms of court as we now understand them. A committee, of which a quorum shall be three, of the district judges of the district, and all of the district judges of the district can sit if they want to, shall distribute the business and set terms of court, of the need of which they are to be informed by the clerks, and hold as many courts in one place as is necessary. All of the district judges can sit together. They can sit separately. They can sit by twos. They can hold the court by divisions. They can hold it as long as they see fit. They are to be detached from being squatted down in their respective little districts, as we have them now laid off by the Legislature, and administer the business, and do justice, and try cases, and hold court whenever it is necessary, and as many courts as are necessary, and constitute these district courts, as far as the personnel goes, absolutely at their direction, but no district judge shall sit continuously in his own county, and with the proviso, of course, that in case of judicial administration of long, drawn-out cases, or receiverships, or what not, the same judge may continue to run that case or receivership or judicial administration to its final termination. So much for the district courts, except this: They can split the dockets. They can hold a term for criminal business. They can hold a term for civil business. They can hold a term for petty civil business. They can dispose of it in any way whatsoever that will lead to the administration of justice. I think we are all agreed, who have reflected on this subject, that terms of court to be fixed by the Legislature are an absurdity, and that shutting up a judge in his own district is an absurdity. There is a provision that each judge outside of his own county shall receive in addition to his salary a minimum of three dollars a day to cover expenses. It should be more.

Now, as to the Supreme Court. Texas is an empire, with a rapidly growing population, and many complex legal problems constantly confronting the courts. What is our Supreme Court at present? Three justices, a committee on appeals, or a com-

mittee on granting or refusing writs of error, and recently two more wheels put on, a commission of appeals of six members, sitting by threes. There you have a Supreme Court which you roughly may state as composed of four wheels, not interchangeable except to a very limited extent, and as Justice Greenwood explained to us the other night, any lawyer applying for a writ of error can compel the review of what he assigns as a constitutional question, if his writ of error is refused by the committee, or if there is contradiction in decisions by the Supreme Court itself. In other words, the grit has got into that wheel already, and instead of aiding the Supreme Court, to an enormous extent it is impeding the Supreme Court. Now, gentlemen, this matter of turning these multitudinous wheels! What I say does not involve the slightest criticism of our judges, but their attention is constantly directed to the rules of turning the wheels, instead of to deciding the fundamental law and justice of the case. Why, I believe in the last report of the Supreme Court of the State of Texas there are about 125 pages taken up in the discussion of whether or not the wheel for granting writs of error is constitutional or not. I am not saying that that discussion is not a worthy discussion. I am not saying that too much space is taken up. But I am saying that it is a rotten absurdity for the time of our judges to be taken up in this unending discussion of wheels, grinding men's lives away, instead of demonstrating that justice which we are told resides in the bosom of the Almighty Himself.

Now it is proposed that the Supreme Court shall function itself, and generally administer the whole judicial machine. I think that the Chief Justice of the Supreme Court and not the Supreme Court itself should have this power, but we have fixed it for the Supreme Court to have the sole responsibility of running the machine; and some of the powers of the Lord Chancellor of Great Britain. We were afraid of the clamor which would be raised, or might be raised, that it made the Chief Justice too powerful, and those administrative powers we have lodged in the Supreme Court itself. I think it should be in the Chief Justice. I think the responsibility should be localized.

Coming to the Supreme Court itself, how shall it administratively function itself and be organized? We abolish absolutely the Court of Criminal Appeals. We think that a detached, in-

dependent wheel of that sort does not work well, and that it has been completely demonstrated in Texas and elsewhere. We provide for a criminal division and a civil division, for quorums of five in the criminal division and quorums of three in the civil division, and that where there is a dissent or expression of a serious doubt without a dissent, the matter shall go to the Supreme Court in banc. Of course, there would be no opinion whatever. Of course, it would be just simply docketed upon the submission docket, with the provision that in case of a constitutional question, or contradiction in the decisions of the Supreme Court or the Court of Civil Appeals being thought to be involved, that it shall not go to the Supreme Court in banc, there not being any dissent or serious doubt expressed, unless the civil division or the criminal division shall find that the constitutional question or the conflict exists. Otherwise, a lawyer by assigning the question would automatically pass it up to the Supreme Court in banc, ignoring these divisions, and making it impracticable, and bringing about the immense trouble that Judge Greenwood has explained to us as now existing.

Now, coming to the administration, all vacancies in the judicial machine except the probate judge and the magistrate, are to be filled by the Supreme Court, including district attorneys, until the next election—all vacancies upon the Supreme Court itself to be so filled by its own nomination until the next election. It takes the matter entirely away from the Governor, who is a political official, necessarily. It provides that the members of the Supreme Court, composed principally and primarily of the present Supreme Court and the present justices of the Courts of Civil Appeals, shall each go on circuit and sit with the district judges or by himself for at least one month in the year. We think that is a matter of great importance, and that it is a matter in which we should revert to the wise custom of our ancestors, although their old machine is absolutely unadapted to our present system. We desire to bring about uniformity as far as possible in so much of practice, of ethics, standard customs, et cetera, which govern the bar and the judiciary, as possible, through the Supreme Court, and bring them in closer contact with the bar of this State. There is a provision that they shall receive not less than \$5.00 per day as expenses while they are on circuit.

Such, gentlemen, are by no means all of the important mat-

ters in this bill, or all in this resolution, but they are all which I will take the time now to state. I trust if you have not read the resolution that you have read to a large extent the preliminary analysis. Now, I would not do what I am about to do for the sake of brevity were I speaking to anything more than a comparatively small group of lawyers, as I desire to get through rapidly, and as this document is written on enormous spaces, but you will pardon me if I read from what I have here.

PROPOSED AMENDMENT TO THE STATE CONSTITUTION,  
AMENDING ARTICLE 5 OF THE CONSTITUTION RELAT-  
ING TO THE JUDICIAL DEPARTMENT OF THE STATE  
GOVERNMENT BY ADOPTING IN LIEU THEREOF  
THE FOLLOWING JOINT RESOLUTION

*Be It Resolved by the Legislature of the State of Texas:*

That Article 5 of the Constitution of the State of Texas be repealed and that in lieu thereof the following be adopted; and that Article 5 of the State Constitution shall hereafter read as follows:

SECTION 1. The judicial power of this State shall be vested in one Supreme Court, in District Courts, in Probate Courts, in Commissioners' Courts, and in Magistrate's Courts, and in such other courts as may be provided by law.

SEC. 2. No member of the Supreme Court, and no District Judge shall participate in partisan politics while in office, but they may be candidates for re-election, and may use lawful methods in promotion of their own candidacies.

SEC. 3. The Supreme Court shall consist of a Chief Justice and not less than fourteen Associate Justices; until otherwise provided by law.

No person shall be eligible to the office of Chief Justice or Associate Justice of the Supreme Court unless he be, at the time of his election, a citizen of the United States and of this State; and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer or a judge of a court, or such lawyer and judge together, at least seven years.

The Chief Justice and Associate Justices shall be elected by the qualified voters of the State at a general election, for County officers, and shall hold their offices ten years, and until their successors are elected and qualified; and shall each receive an annual salary of \$6,000.00 and an additional allowance of \$5.00 per day or any fraction thereof, while filling an assignment on the District Bench, including the necessary time of travel for that purpose; until otherwise provided by law.

The Chief Justice and Justices, or Judges of the Supreme Court, the three Justices or Judges of the Court of Criminal Appeals, the Chief Justices of the Courts of Civil Appeals, now existing, and who

may be in office at the time this amendment takes effect, shall constitute the Supreme Court until the expiration of their present terms of office under the existing Constitution and law, and until two years thereafter; two years being added to the terms of all of the members of the court; and until their successors are elected and qualified. Should the Supreme Court not be filled to fifteen on its new organization in this way, that court shall fill the vacancy or vacancies until the next general election for County officers, and until their successors are elected and have qualified.

SEC. 4. The Supreme Court shall have appellate jurisdiction only, except as herein specified, which shall be co-extensive with the limits of the State. Its appellate jurisdiction shall extend to all cases of which the District Courts have original or appellate jurisdiction, except as herein otherwise provided, subject to such restrictions and regulations as may be prescribed by law.

The Supreme Court shall be authorized to call to its assistance at any time, one or more District Judges, and to assign them to such duties of that court as it may determine, and for such time as it may see fit. When performing these duties the District Judges so assigned, shall have all the powers of Supreme Court Justices and receive the same pay.

The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus as may be prescribed by the law; and, under such regulations as may be prescribed by law, the Supreme Court, and the Justices thereof, may issue writs of mandamus, procedendo, certiorari, and such other writs as may be necessary to enforce its jurisdiction.

The Legislature may confer original jurisdiction upon the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

The Supreme Court shall have the power, upon affidavit or otherwise, as by the court may be determined, to ascertain such matters of fact as may be necessary for the proper exercise of its jurisdiction.

The Supreme Court shall sit from the first Monday in September of each year until the last Saturday of June in the next year, inclusive, at the capital of the State; and may sit at any other time, if the court so decide.

Provided, however, that each member of the Supreme Court shall sit in the District Courts as a trial judge for any length of time, but for not less than one month, as near as may be, during each year; in any county or counties as the Supreme Court may determine, or the Chief Judge thereof, if that court decides to leave the making of the assignments to him, which it may do.

The Supreme Court shall appoint a clerk, who shall give bond in such manner as is now or may be hereafter required by law; and he shall hold his office during the pleasure of the Court, and shall receive such compensation as by law may be provided.

SEC. 5. The Supreme Court shall be divided into two divisions, to-wit: the Civil Division and the Criminal Division; but the whole court shall sit when and as herein provided; and whenever any power is herein given to the Supreme Court, without particular specification as to how it shall be exercised, that power shall be exercised by the whole court, of which a majority shall be a quorum.

(a) *The Civil Division.*—The Civil Division shall consist of such of the Justices thereof as may be designated by the Supreme Court from time to time. Five shall constitute a quorum, and a concurrence of a majority of those sitting shall be necessary to the decision; provided, that the investigations of issues of fact may be remitted to any two or more Justices of the Supreme Court, as the Civil Division may determine.

The civil litigations coming before the Supreme Court shall be decided by the Civil Division, except as otherwise herein provided.

(b) *The Criminal Division.*—The Criminal Division of the Supreme Court shall consist of such Justices thereof as may be designated by the Supreme Court from time to time, not less than three in number, and three shall constitute a quorum; and a concurrence of a majority of the Judges sitting shall be necessary to a decision.

The criminal litigations coming before the Supreme Court shall be decided by the Criminal Division, except as otherwise herein provided.

SEC. 6. Appeals to the Supreme Court are abolished in all civil cases.

No civil case shall be reviewed by the Supreme Court, or the Civil Division, except on writ of error; for which the party suing for the writ shall make application to the Supreme Court, assigning the errors of law which he propounds, and stating wherein, if he so contends, the verdict, or the finding of an issue of fact by the lower court, may be unsupported or subject to review, and stating a synopsis of the case, and grounds of error which he may desire to present to the Supreme Court, and controversies over points of law or issues of fact; and otherwise presenting his application under such regulations as may be prescribed by the rules of the Supreme Court.

The statements in the application shall be taken as true, for the purpose of the application; but the applicant may be penalized by the Supreme Court in favor of the defendant in error, in not over ten per cent of the amount involved, if the writ be obtained by willful misrepresentation or gross carelessness.

The application and briefs and arguments in support thereof shall be submitted to the opposing party, and may be answered by briefs and arguments, and there may be such oral arguments on applications for writs of error, as the Supreme Court may allow. In granting the writ the court shall designate what portions of the record below shall be brought up; but no statement of the whole evidence shall be brought up, except by bill of exception preserving an exception to the overruling of a request for a peremptory instruction in

the lower court, or to the judgment or decree of a judge where there is no jury, and raising the point or points of the sufficiency of the evidence to support the verdict, judgment or decree.

Applications for writs of error may be submitted to the Civil Division; or may be submitted to and orally argued before one or more of the Justices of the Supreme Court as the Supreme Court may determine, and be granted by the one or more Justices to whom presented; but shall not be refused in whole or on any point except by the Civil Division, or the Supreme Court.

Criminal appeals to the Supreme Court shall be prosecuted before the Criminal Division of the Supreme Court, on such conditions and under such regulations and restrictions as may be provided by law.

In either criminal or civil cases, should a Justice of either division dissent, or seriously doubt the correctness of the opinion of the majority, or should a constitutional question be involved, or should there be a conflict in the prior decisions of the Supreme Court, or of the Court of Criminal Appeals, or both, the case shall be referred to the Supreme Court, as such, without regard to any division; and this provision shall apply to applications for writs of error, as well as to cases in which writs have been granted. Not less than nine members of the court shall constitute a quorum.

SEC. 7. The State shall be divided into judicial districts by the Supreme Court, not less than nine in number, which may be re-arranged, diminished or increased by that court from time to time; but there shall not be less than seven District Judges in any district, not counting any member of the Supreme Court sitting in the District Court; but the same number of judges are not required to be provided for each district; and in any District Court any member of the Supreme Court shall have the right, on designation, to sit at any time, either by himself or with any other District Judge or Judges, and shall have all the power, when so sitting, of a District Judge; and he shall be authorized to so sit by designation as hereinabove provided.

For each judicial district there shall be elected, by the qualified voters thereof, at a general election for County officers, the judges of the judicial district, who shall be citizens of the United States and of this State, and who shall have been practicing lawyers of this State or a judge of a court thereof, or practicing lawyer and judge for not less than five years next preceding their respective elections, and who shall reside in the district during their respective terms of office.

A District Judge shall hold office for a period of eight years; and shall receive for his services an annual salary of not less than \$4500.00 and an additional per diem of \$3.00 per day while outside of his home county in the performance of the duties of his office, until otherwise provided by law.

The judges of each district, of whom not less than three shall



constitute a quorum for this purpose, shall meet as often as they may see fit to consider the dockets of the different courts, to designate the District Judges for the holding of the different courts, and to set the terms and dockets thereof.

Terms of the District Courts are abolished, as fixed by statutes, but the District Judges shall hold such terms for such length of time and as often and as long in the several counties as they may determine, in order to best adjust among themselves the dispatch of business and the speedy administration of justice; and for this purpose the clerks of the several District Courts shall furnish them with lists of cases and data thereon when required. Terms may be set for the whole docket or any portion thereof.

There shall be a District Court in each organized county of this State, to be designated, and to be presided over by members of the Supreme Court or by the District Judges, or both.

The District Court of any county or any one trial may be held by the Chief Justice or any Justice of the Supreme Court, or by any one District Judge, or by the Chief Justice or any Justice or Justices of the Supreme Court, sitting with one, two or more District Judges or by one, two or more District Judges sitting together.

When the Chief Justice or a Justice of the Supreme Court may sit with one District Judge, if there be a division of opinion, that of the Chief Justice or the Justice of the Supreme Court shall prevail. When two District Judges may sit together, and there be a division of opinion, that of the judge of longest continuous service shall prevail; and when three or more justices or judges sit together, then the opinion of a majority shall prevail; unless they be equally divided, when the opinion of those of longest continuous service shall prevail.

The District Court of any county may be held by divisions, if, in the opinion of the judges holding the court (there being more than one sitting), the dispatch of business and the administration of justice will be facilitated thereby, the judges sitting separately, or two or more together, in different divisions and exercising all of the powers of the District Court in each division; and the different divisions may sit at the same time, with full power to adjust and transfer the business between them so as to best dispatch the same. No District Judge shall sit constantly in the same county, but may always sit, in term or vacation, for the completion of any case commenced before him, receivership, or any matters of legal or equitable administration.

By order the Chief Justice of the Supreme Court may designate judges of the District Courts to sit in another district and direct in what county or counties they shall sit.

SEC. 8. The justices or judges of the several Courts of Civil Appeals, now abolished, other than the Chief Justices thereof, and the judges of the District Courts, the judge of the Criminal District Court of Harris County, the judge of the Dallas Criminal District

Court, and judges of all other Criminal District Courts, if any, who may be in office at the time this amendment takes effect, shall become, be, and remain District Judges until the expiration of their respective terms of office under the present Constitution and laws, and two years thereafter; two years being added to each of all their respective terms under the present Constitution; and until their successors are elected and qualified as District Judges; and shall stand apportioned among the Judicial Districts, each to be a District Judge of that judicial district to which the county of his residence is apportioned, by the formation of such districts by the Supreme Court.

SEC. 9. The District Court shall have original jurisdiction of all criminal cases of the grade of felony, and of all misdemeanors of which exclusive original jurisdiction is not given to the Magistrate's Court; of all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce; of all misdemeanors involving official misconduct; of all suits to recover damages for libel, slander or defamation of character; and of all civil litigations, except those of which the Probate Courts have original jurisdiction.

The District Court shall have appellate jurisdiction and general control in probate matters, over the Probate Courts, for appointing guardians, granting letters testamentary and of administration, probating wills, settling the accounts of executors, administrators and guardians and for the transaction of all business appertaining to estates; and original jurisdiction and general control over executors, administrators, guardians and minors, under such regulations as may be prescribed by law.

Provided, however, that whenever the majority of the District Judges of any judicial district shall decide it to be necessary for the administration of justice, they may, by an order signed by them, and to be entered on the minutes of the District Court of the county, direct that all civil cases not involving slander, libel, land or domestic relations, and less than \$200, exclusive of interest and costs, shall be tried by the Probate Judge of that county, with a jury of six men, if demanded, he to have no fixed terms, but to hold court when and at such places as may be fixed by the Commissioners' Court, and an appeal in all cases over \$20.00 to be allowed to the District Court, where it shall be tried de novo—a majority of the District Judges of the judicial district may revoke this order.

The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners' Courts, with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever, for which a remedy or jurisdiction is not provided by law or this Constitution; and such other jurisdiction, original and appellate, as may be provided by law.

Until it may be otherwise provided by law, no writ of error, in civil cases, shall be allowed by the Supreme Court to the District

Court, in cases not involving land or domestic relations, when the amount involved is less than \$150.00, exclusive of interest and costs, unless a constitutional question be involved.

SEC. 10. There shall be a clerk for the District Court of each organized county, who shall be elected by the qualified voters of the courts, and who shall hold his office for four years, subject to removal by information, or by indictment of a grand jury, and conviction by a petit jury. In case of a vacancy, a majority of District Judges of the judicial district in which that county is situated shall have the power to appoint a clerk who shall hold until the next general election for County officers, and until his successor has been elected and has qualified. The County Clerk may be Clerk of the District Court when and as provided below.

SEC. 11. In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be impaneled in a civil case unless demanded by a party to the case, and unless a jury fee be paid by the party demanding the jury, for such sum and with such exceptions as may be prescribed by the Legislature. In the trial of any misdemeanors and in the trial of civil cases, not involving land or domestic relations, or an amount, exclusive of interest and costs, of over \$500.00, the jury shall be composed of six men, in other cases of twelve men.

SEC. 12. No judge or magistrate shall sit in any case wherein he may be interested, or when either of the parties may be connected with him, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when he shall have been of counsel in the case.

No judge or magistrate shall receive any compensation out of the fees in any case, or any gratuity or gift from any litigant.

When any Justice of the Supreme Court, or District Judge, shall be disqualified to hear and determine any case, or cases, in their respective courts, and there be a deficiency of judges through such disqualification so that the administration of justice may be delayed, the disqualification shall be certified to the Chief Justice of the Supreme Court, who shall immediately appoint a Justice of the Supreme Court, or a District Judge, or commission a person or the requisite number of persons, learned in the law, for the trial or determination of the cause or causes in which the disqualification may exist. If the Chief Justice of the Supreme Court be disqualified for this occasion, the senior Justice in point of service shall act as Chief Justice.

When any judge of a District Court is disqualified, the parties may, by consent, appoint a proper person to try the case, if a member of the Supreme Court or a District Judge be not available; or, upon their failure to do so, a competent person may be appointed by the Chief Justice of the Supreme Court to try the same, or by the senior

Justice of the Supreme Court, in point of service, if the Chief Justice be disqualified.

SEC. 13. All judges of courts of this State shall, by virtue of their offices, be conservators of the peace throughout the State.

The style of all writs and process shall be, "The State of Texas." All prosecutions shall be carried on in the name and by authority of the State of Texas.

SEC. 14. Grand and petit juries in the District Courts shall be composed of twelve men, except as provided above as to the petit juries; but nine members of a grand jury shall be a quorum to transact business and present bills.

When, pending the trial of any case, one or more of the jurors, not exceeding three, when there is a jury of twelve men, or not exceeding one when the jury is of six men, may die or be disabled from sitting, the remainder of the jury shall have the power to render the verdict.

SEC. 15. There shall be established, in each organized county of this State, a Probate Court, which shall be a court of record. There shall be appointed by the District Judges of the judicial district in which the Probate Court may be situated, a Probate Judge for each Probate Court in this State, who shall have been a practicing lawyer or judge, and shall have practiced law or have been a judge, or both, for not less than four years before his appointment; and who shall hold his office for six years from November 1st next succeeding his appointment, and until his successor shall be appointed and have qualified, and this shall be his term whether appointed to fill a vacancy or not. He shall receive no fees, but a salary to be fixed by the Commissioners' Court of each county, and paid by the respective counties. The County Clerk, on the direction of a majority of the District Judges of that judicial district, shall issue a commission to the Probate Judge and record the same on the Probate Minutes.

All of the existing County Judges, under the present Constitution, shall continue to exercise the duties of Probate Judges as now provided by law, and may exercise the jurisdiction, by order of the District Judges, hereinabove authorized to be bestowed on the Probate Judges, until their respective terms of office under the present Constitution and laws have expired; and two years thereafter, two years being added to their terms as Probate Judges; and until their successors are selected and have qualified; and the Judges of the Probate Courts, as herein provided for, shall only qualify and commence to perform their duties upon the expiration of the terms of the present County Judges.

SEC. 16. The Probate Courts shall have the general jurisdiction of Probate Courts; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration; settle accounts of administrators; transact all business pertaining to deceased per-

sons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons; and apprentice minors as may be provided by law; and the Judges thereof shall have power to issue writs of injunction, mandamus and all writs necessary to the enforcement of the jurisdiction of their respective courts. The Probate Judges shall be judges of such Juvenile Courts as may be established.

The Judges of the Probate Courts shall, as continuously as possible, keep their courts open in each county, and at all times, as far as the necessities of the business before the court may require. There shall be no terms thereof.

SEC. 17. Prosecution in the District Court for misdemeanors may be commenced by information filed by the County or District Attorney, or by affidavit, as may be provided by law. Grand juries impaneled in the District Courts shall inquire into misdemeanors, and all indictments therefor returned into the District Court, falling within the jurisdiction of the Magistrate's Court, shall forthwith be certified to such court having jurisdiction to try them, for trial; and if such an indictment be quashed in the Magistrate's Court, the person charged shall not be discharged, if there is a probable cause of guilt, but may be held by the Magistrate to answer upon information or affidavit.

SEC. 18. Each organized county in the State, now or hereafter existing, shall have one or more stipendiary magistrates as may be decided to be necessary by the Commissioners' Court of each county, or provided by law. The number of magistrates shall only be decreased or increased by order of the Commissioners' Court, the decrease to take effect at the expiration of a term of a magistrate. The magistrates shall be paid by the respective counties such salaries as the Commissioners' Court may establish, and they shall never receive any compensation out of fees.

The magistrate or magistrates in each organized county are to be elected for four years, and until their successors shall be elected and qualified; and each shall be elected by the qualified voters of the whole county, and not by precincts.

Each magistrate shall have jurisdiction throughout the whole county, but his jurisdiction shall be limited to criminal matters, and to criminal cases where the penalty or fine to be imposed by law may not be more than \$200.00, and he may have such other criminal jurisdiction as may be provided by law under such regulations as may be prescribed by law.

Appeals to the District Court of each county shall be allowed, in all criminal cases from the Magistrate's Court, under such regulations as may be prescribed by law. There shall be but one Magistrate's Court in any county. The Magistrates of a county, if there be more than one, shall hold this court by divisions, or may sit together, as the requisites of the business may require, and as they may determine. If they sit together, the opinion of the majority shall determine, and

in case of equal division, that of the one or more of longest continuous service.

There shall be no terms of the Magistrate's Court, but this court, in each county, shall be open at all times, as near as may be.

Each Magistrate shall be ex officio a notary public.

In case of a vacancy in the office of a Magistrate, it shall be filled by the County Commissioners' Court of that county until the next election of county officers and qualification of the person elected.

Upon the adoption and going into effect of this amendment the present Justices of the Peace of each county shall become Magistrates and remain such to the end of their terms and two years thereafter, and until the next general election for County officers, and until their successor or successors are elected and have qualified.

The Magistrates shall have such powers as examining and committing magistrates and coroners as may be provided by law, and until changed by law, all powers and jurisdiction, in criminal matters, now possessed by Justices of the Peace.

SEC. 19. For each organized county in this State there shall be elected four Commissioners and one Presiding Commissioner, being five in all, to be elected by the qualified voters of the whole county, or by precincts, as may be provided by law, and each to hold office for four years, and until his successor shall be elected and qualified. The County Commissioners shall, together with the Presiding Commissioner as presiding officer, compose the County Commissioners' Court, and shall exercise such powers and jurisdiction over all county business as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.

The County Judge and County Commissioners, of each county, holding office under the present Constitution, shall remain in office until the expiration of their respective terms, and two years thereafter, and until their successors are elected and qualified, and the County Judge shall be the Presiding Commissioner, and with the County Commissioners shall compose the Commissioners' Court until the expiration of their offices under the present Constitution.

SEC. 20. No compensation of a judge or magistrate shall be decreased during his term of office.

SEC. 21. There shall be elected for each county, by the qualified voters, a County Clerk, who shall hold his office for four years, and who shall be clerk of the Probate and Commissioners' Courts and recorder of the county, and whose duties, perquisites and fees of office shall be as prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners' Court until the next general election for County officers, and until his successor has been elected and has qualified; provided, that in counties having a population of less than 8000 persons there may be an election of a single clerk, who shall perform the duties of Clerk of the District Court and County Clerk. The County and District Court Clerks, and clerks

performing the functions of both offices under the present Constitution, shall have two years added to their terms and shall, under this amendment, continue in office as District or County Clerks, or District and County Clerks, until the expiration of their present terms, and an additional period of two years; and until their successors are elected and have qualified.

SEC. 22. A County Attorney for counties, in which there is not a resident Criminal District Attorney, shall be elected by the qualified voters of each county, and hold his office for the term of four years. In case of vacancy, the Commissioners' Court of the county shall have power to appoint a county attorney until the next general election. The county attorney may represent the State in all cases in the District and Magistrate's Courts in their respective counties; but the respective duties of District Attorney and County Attorney shall be regulated by the Legislature, and shall be the same as they now are under existing laws, until otherwise provided.

The Legislature shall provide for the election of District Attorneys of such number as the Supreme Court may determine and as may be deemed necessary from time to time, and make provision for the compensation of district attorneys and county attorneys; the district attorneys of a judicial district to be elected at large by the electors thereof at a general election of county officers; provided, that District Attorneys shall receive not less than an annual salary of \$500.00, to be paid by the State, and such fees or commissions and perquisites as may be provided by law.

County Attorneys shall receive as compensation such fees, commissions and perquisites as may be prescribed by law. All County Attorneys holding office under the existing Constitution shall remain County Attorneys and their terms of office be extended two years and to the next general election for county officers thereafter, and until their successors are elected and qualified.

All District Attorneys holding office under the present Constitution shall remain District Attorneys, and their terms of office shall be extended two years, and to the next general election for county officers and until their successors are elected and qualified; and the Chief Justice of the Supreme Court shall assign them to the District Courts of the several counties, and their successors thereafter.

SEC. 23. There shall be elected by the qualified voters of each county a sheriff, who shall hold his office for the term of four years, whose duties and perquisites and fees shall be prescribed by the Legislature, and vacancies in whose office shall be filled by the Commissioners' Court until the next general election for County and State officers. All sheriffs holding office under the present Constitution shall remain in office on adoption of this amendment, and their terms shall be extended for two years, and until the next general election for county officers and until their successors are elected and qualified.

SEC. 24. County Attorneys, Clerks of the District Courts, County Clerks, Magistrates, Constables and other county officers may be removed by the judge or judges of the District Courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing and finding of its truth by a jury.

SEC. 25. The Supreme Court shall have exclusive power to make and establish rules and the law of pleading, and practice, and to reform the same, for the government of that court and all other courts of this State, in order to expedite the dispatch of business and the administration of justice; and to provide for the forms of all writs, notices and process, civil or criminal, and for the method of service thereof, by whom or how to be served, returns; and for the length of time of notice or service, and the method and forms of taking depositions.

SEC. 26. The State shall have no right of appeal in Criminal cases, except the State shall have the right to appeal from the judgment of the court quashing an indictment, and in such cases the defendant, pending such appeal, shall be released on his own recognizance.

SEC. 27. The Supreme Court shall, at its first session after the adoption of this amendment, provide for and transfer all business pending in any court to the court to which jurisdiction is given by this amendment to the Constitution over such business. This may be done by general orders, without specifying the particular case or business.

All cases pending in the Courts of Civil Appeals or Criminal Appeals shall be transferred to the Supreme Court and be decided by the Supreme Court, or the Civil or Criminal Divisions thereof as herein provided. All cases pending in the County Courts and all civil cases pending in the Justices' Courts shall be transferred to the District Courts of the respective counties. All criminal cases in the Justices' Courts shall be transferred to the Magistrate's Court of the respective counties.

SEC. 28. Vacancies in the offices of Chief Justice or Justices of the Supreme Court and of Judges of the District Courts and in the office of District Attorney shall be filled by the Supreme Court until the next succeeding general election for county officers, and until the persons elected have qualified. Vacancies in the office of Probate Judge or Clerk of the District Court shall be filled by the District Judges of the judicial district including the county in which the vacancy arises.

Vacancies in the office of Presiding Commissioner of any Commissioners' Court, or in the office of County Commissioner, or in the office of County Attorney, or in the office of County Clerk, or in the office of Magistrate, shall be filled by the Commissioners' Courts of the respective counties until the next general election for county officers, and until the persons elected have qualified.



SEC. 29. All provisions in the existing laws of the State of Texas in contradiction hereto are annulled and repealed.

SEC. 30. The Supreme Court, District Courts and Probate Courts and County Commissioners' Courts and Justices' or Justice of the Peace Courts are re-constituted as herein provided.

The Court of Criminal Appeals, the Courts of Civil Appeals, the County Courts and all other courts whatsoever, not here mentioned, are abolished; except any existing Town or City Municipal Court, with only criminal jurisdiction; these are not abolished.

SEC. 31. The next election for county officers, now provided for under the existing Constitution and laws, is annulled; and the first election hereafter for county officers shall be two years after the time now provided for their election, and thereafter at intervals of four years.

SEC. 32. This amendment shall go into effect on September 1st, 1919, up to which time none of its provisions shall be operative. It shall be self-operative, but if there be a need to do so, the Governor shall promptly call the Legislature in special session, in order to enact any laws necessary to the efficient working of this amendment. He may do this before September 1st, 1919, after this amendment may be adopted; or thereafter.

SEC. 33. This proposed amendment to the Constitution shall be duly published once a week for four weeks, commencing at least three months before the special election to be held for the purpose of voting thereon; which election shall be held on the first Saturday of July, 1919; the publication to be made weekly in a newspaper in each county in the State of Texas in which a newspaper may be published, provided reasonable terms can be made therefor, of which the Governor shall be the judge; and the Governor shall, and he is hereby directed, to issue the necessary proclamation for the submission of this proposed amendment to the qualified electors for members of the Legislature.

At the election all persons favoring this amendment shall have written or printed on their ballots the words, "For the Amendment of Article 5 of the Constitution in regard to the judicial department of the State Government," and those opposed thereto shall have written or printed on their ballots the words, "Against the Amendment to Article 5 of the Constitution in regard to the judicial department of the State Government."

Ten Thousand Dollars, or as much thereof as may be necessary, is now appropriated to defray the expenses of advertising and holding the election.

MR. DABNEY: One of the greatest, perhaps the greatest, military man this country has ever produced, said: "The duty is ours. The consequences are God's." It is a timorous policy, this constantly delaying our affairs and saying that nothing can

be done. Of course, this resolution that is submitted is subject to many betterments. I have some in mind myself. It has not been widely enough criticized, and therefore should it be adopted—I do not know what is the opinion of the majority of you gentlemen—as a matter to be brought to the attention of our Legislature, I would submit that it be only adopted in principle, and placed in the hands of a committee with authority to carry out the principles therein which are approved of by this Association. (Applause.)

THE PRESIDENT: Gentlemen of the Association: Mr. Dabney has outlined this bill to you very thoroughly, and I earnestly hope it is going to be very thoroughly discussed. There are two or three things about it that ought to be borne in mind. First, you are not going to amend the Constitution here today. The resolutions of this Association are not going into effect right now. So there is no necessity for putting this thing in absolutely concrete shape at this time. The second proposition is that this proposed change in our system is a radical, practically absolute change, of our old theory of courts and their building up. It is a change that seems to be in accord with the best thought of our people all over the country at large, and I think is growing with the people of Texas. But, small body though we be, we represent a body of a thousand or more of the best and most representative lawyers of Texas, and it was the hope of the Board of Directors of this Association at this meeting, not so much to place ourselves on record as endorsing particular details, as to carry forth to the members all over the State, who will read these proceedings, an intelligent discussion pro and con of this radical proposed change, with objections to it from intelligent men, and arguments as clearly and briefly stated as may be in favor of it, with such recommendations at the end as to immediate action. Mr. Garwood points out one provision that it seems clear we ought to get back to, and that is the provision as to the old jurisdiction of the Supreme Court as against the new. Some few matters it may be imperative that we act on now, but in any event we should carefully go on record as to some principle, and that those here who have given the matter consideration should express their view, even though many will feel like they have not had time to formulate them as thoroughly as

they would like; but let them go in for what they may be worth, and let the discussion be full and free, that it may be passed out to the bar. We are in war time, and it is likely nothing will be done now, but the record had just as well be completed. A revolution is coming when the war closes, and let us prepare the minds of the bar over the State as thoroughly as we may, and in so doing do a patriotic duty. So I earnestly hope that this matter will be taken up before the very capable body of lawyers who are here, small though that body be, and their views put into this record.

One other matter, and I will rest the discussion with you. Dr. Pound is here, and at such point in the discussion as he thinks best, if there are particular features about this bill that he would like to make a suggestion about, or say anything to clear up the atmosphere or throw light on the subject, I know that I reflect the feeling of every member here that we would certainly be glad to have any suggestions as to this particular measure and this particular outline to go into this record, that he sees fit to make. (Applause.)

MR. SANFORD: I was going to suggest that a great many of the members have come in since Mr. Dabney began to address the body, and they do not know the matter that is actually before the house. The motion as made was for the purpose of getting the matter in proper form before the house and invite discussion. I suggest that the President state the motion.

THE PRESIDENT: The motion before the house is that the report of the Special Committee submitting the constitutional amendment be adopted, which brings the entire report, together with the constitutional amendment proposed to be submitted, reorganizing the courts on the unit or collegiate basis, as it is described, as a self-functioning body, before you.

MR. MARTIN: Mr. President and Gentlemen: There is one matter, which appears to be a small matter, and yet it deals with such a vital principle, I believe, that I think we should express ourselves upon it. In Section 2 of the resolution prepared by Mr. Dabney the provision is made that no member of the Supreme Court and no district judge shall vote or participate in politics while in office, except that they may be candidates for

re-election and may use lawful methods to promote their candidacies. I do not believe in the principle of entirely disfranchising a man because he is a judge. I believe that a judge, because he is a judge, does not lose and should not lose or avoid the responsibility that rests upon him as a citizen. I believe that he ought to be taken out of partisan politics entirely. I think that the fact that a man is a judge of a court should inspire him at least to withdraw from partisan politics while he is on the bench, but I do not think that he should be entirely disfranchised, and therefore, if I can get a second upon this, I move that that section be amended so as to read as follows: "That no member of the Supreme Court and no district judge shall participate in partisan politics while in office, except that they may be candidates for re-election, and use lawful methods to promote their own candidacies."

MR. DABNEY: If I may do so, I accept the amendment. I second the motion.

MR. MARTIN: The motion is to strike out the word "vote" and the word "or" between the words "shall" and "participate," and inserting the word "own" before the word "candidacies," as it stands now. It now reads: "No member of the Supreme Court and no district judge shall vote or participate in politics while in office, except that they may be candidates for re-election, and may use lawful methods in promotion of their candidacies." As amended it reads: "No member of the Supreme Court and no district judge shall participate in partisan politics while in office, except they may be candidates for re-election and may use lawful methods in promotion of their own candidacies."

MR. KIMBROUGH: Wouldn't it be better, instead of saying "except that" just to insert the words: "but they may be candidates for re-election." There would hardly be an exception.

MR. MARTIN: I will accept that amendment as far as my motion is concerned. I believe it is better language myself.

MR. KIMBROUGH: I understand Judge Dabney is willing to accept that amendment.

MR. DABNEY: Why, yes sir; and I would suggest, gentlemen, to save time, that any amendment suggested need not be formu-

lated so as to be complete, if this thing should carry, and so as to bind this body and the committee themselves to it, but that it be adopted only in principle. Otherwise, we will be tied up here with verbiage that on critical analysis might be objectionable.

THE PRESIDENT: There is no other way to handle it that I see. The report is by the committee, and it is subject to amendment, and that is the proper procedure, as far as I can see.

MR. HART: I believe we are in danger of getting into these little details that are really not essential, and I move you that Dr. Pound be invited at once to proceed with any suggestions he may have in mind in connection with the general bill as presented by the committee.

MR. ESTES: I was just going to suggest that it would be an opportune time. Of course, we would all be delighted to hear from Dr. Pound, and I am sure he can add to our information and interest in the subject. There is one inquiry I want to make of Mr. Dabney. I am not sure whether I understand it. Under this plan it is contemplated that all appeals be heard at Austin, is it, all reviews, at Austin only?

MR. DABNEY: Yes, sir. It does not say so, but one Supreme Court is contemplated.

MR. BARWISE: I am sure we all want to hear Dr. Pound, but I know he would rather hear some discussion from us and to more maturely consider these things himself before he gives us his views, and I make the point of order now that this is for discussion before the whole body.

THE PRESIDENT: The Chair takes the view that there is nothing before the house but the amendment, and neither Dr. Pound nor anybody else could speak in due order except on the amendment, and the Chair, with that view, will sustain the point of order.

MR. MOSELEY: It seems to me the first question that ought to be considered by this Association in connection with this report—

THE PRESIDENT: The question before the house is the amendment.

MR. KIMBROUGH: Upon that question, since Mr. Dabney accepted the amendment offered by the gentleman, may it not be considered as part of the original report?

THE PRESIDENT: I rather think not, because the report is before the house. We had the same suggestion before us yesterday. You have heard the amendment.

The question was put upon the amendment and the amendment was adopted.

THE PRESIDENT: The report is amended as outlined, and the amended report is before the house.

MR. KIMBROUGH: If amendments are adopted, may I not suggest that all amendments be submitted in writing, for the sake of certainty and precision in the language offered?

THE PRESIDENT: I think that is a good suggestion, and would suggest to those who have amendments, that they write them out, so that they can be passed up promptly, and we can take up any particular amendment and handle it promptly, and pass on to the general discussion.

MR. MOSELEY: Mr. President and Gentlemen: It seems to me that the proper way to discuss this report is not at this time to go into details of amendments, such as has been offered by Judge Martin and may be offered by others, as it is to discuss the fundamental principles underlying the whole proposition. I have not given this matter the consideration that I should have, and am not as familiar with it as a great many others, and will not discuss it as intelligently as it will be discussed by others before the Association, I am sure, but it seems to me that the first subject that ought to engage our attention is this question—as to whether or not this bill or this law should be made a constitutional question, or part of our Constitution, or whether it should be relegated to the Legislature of our State to construct this judicial system, as provided for in the Constitution of the United States of America, or, you might say, by the Federal Government.

Mr. Chairman, it seems to me that this is a very serious question, the question as to whether or not this act should be made a part of the Constitution of our State, whether or not these de-

tails should be inserted in the Constitution of the State, or whether or not the general principle should be laid down and it should be left to the Legislature to work out the details of the various courts and their duties, and the districts such as it has been endeavored to set out in this act. I frankly say to you, Mr. Chairman, that I am of the opinion that this matter should not go into the Constitution. As Judge Dabney has very clearly shown us, what we need is flexibility. What we need is the ability to change our courts to meet the exigencies of the times. When you make it a part of the Constitution of this State, so that whenever a change is necessary it is absolutely essential that we go before the people for a change in our Constitution, you make a rigidity and a fixity at that moment that makes a change in our laws, such as the necessities of the times may demand, absolutely impossible. In other words, we are today up against exactly that condition. Again and again we have endeavored to change our Constitution so as to meet the needs of the times, and we have been met by the difficulties of the situation. It seems to me, therefore, gentlemen, that that is the important matter for this association to decide at this time, whether we should not say that the Legislature of this State shall provide for a Supreme Court and such other courts as in their judgment may be necessary to carry on the judicial work of this State, and I invite the attention of the Bar Association to that one subject. While I am not entirely committed to it, I want to say that it seems to me that is the proper procedure. I recognize, gentlemen, the fact that the objection is made that it throws it into politics, and that it makes it uncertain; that it leaves it to the Legislature, whereas, it ought to be fixed in the Constitution, and forever fixed. But, gentlemen, I call your attention to the fact that we have a democratic government. The whole scheme and form of our government are that the people shall control; that they shall enact the laws of the country; and I think, notwithstanding you may disagree with me, gentlemen, that the greatest safeguard of our judiciary today is the fact that the courts must go in review before the people of this country. I want to express a revolutionary doctrine here today, and that is that the Federal judiciary, as it is constituted today, is a menace to the free institutions of this country, because of the fact that they are not amenable to the people of this country in their actions and in

their decisions. I want to say to you, gentlemen, that if the Federal judges of this State had to go before the people every four years or every six years for ratification of their course as Federal judges, there would be such a radical change in the conduct of the Federal judges as to be astonishing. While there is something to be said about long tenure in office, I believe in the right of the people to rule. I believe that the judges of this State should go before the people just as regularly as any other official that we have, to defend their record, if they have made a record, and to listen to the criticisms of the people that may be made upon that record, as they, in their official capacity, have made it. So, gentlemen, I believe this matter ought to go to the Legislature. There are two things you must always take into consideration, and that is the democratic form of government that we have, and also the weak human nature that we have. You will never get perfection in this world until mankind becomes perfected, and you will never have a strong centralized government possible until you wipe out our present provision of rule by the people, and the fact that men must go to the people for approval or disapproval of their acts as public officials. So I say this matter ought to go to the Legislature. Weak as our Legislature may be, it is the only means we have got, gentlemen, of government. If you are not satisfied with the Legislature, change our form of government. I believe this matter ought not to go into the Constitution. I believe it ought to go to the Legislature for the fixing of a Supreme Court, and that all these other details ought to be worked out in conjunction with a committee that you may appoint to act with our Legislature. I say, gentlemen, that this is a matter that I think goes to the foundation of this whole report, and that we ought to fight out that question now, and get the sentiment of this Association, as to whether or not it should be a part of the Constitution, or whether it should be left to the Legislature to outline our system of a judiciary. Before I sit down I want to compliment Mr. Dabney upon the evident toilsome, careful work that he has done in the preparation of this bill. I think it is past all praise. I do not agree with it in a great many details. I am inclined to believe that some of the provisions that are put in there are fanciful. I am rather inclined to believe that possibly the machinery he suggests will prove cumbersome in the course of time, but



those are details that can be subsequently worked out. I want to say this further, gentlemen, while I am on the floor, I have for a long time believed in the abolition of our Courts of Civil Appeals. I have changed my opinion on that proposition. I believe that we should retain our present system of courts of appeal. I believe that the Supreme Court of this State should be made solely a court for revision by writs of error. I do not believe that the Supreme Court of this State should ever be required to thrash out the details of litigation, such as our Courts of Civil Appeals have to do today. I believe the number of judges ought to be increased to a sufficient number that it can do efficient work, but I believe there ought to be an intermediate court, that will simplify the work, so that when it gets to the Supreme Court of this State they will only have to pass, as you might say, upon the abstruse legal problem. In every suit there has to be a supreme decision. All of us always want to have some court that will have the last final say, and a court in whom we will have confidence. Now, if you make a Supreme Court of ten or fifteen members, the last say will be of that tremendous court in banc, and when you put that court in banc to hear any litigation, you have a lavish waste, not only of money, but a lavish waste of valuable time, and I believe that all of those details can be better thrashed out in an intermediate court, and then leave our Supreme Court at the last to render ultimately a final decision on such matters as the Legislature or the law of the country may provide for their decision. Those, however, are matters that we can comment on later, but I want to invite the attention of the Association to the discussion of the fundamental question, as to whether this bill should be made a part of the Constitution of this State, or whether it should be left to legislative enactment to work out the details that have been outlined in this bill.

MR. R. H. WARD: Mr. President and Gentlemen: I have been a member of this Association since 1904, but in consequence of the conflict between the time of the meeting of the Association and the convening of the courts of my county it has been only very occasionally that I have had the pleasure of attending the convention. I commenced the practice of the law in Texas prior to the adoption of the

present Constitution. I practiced under the Constitution of 1869 and under the Constitution of 1876. I have grown up with this system, and I have seen the evils of it grow and increase with the passage of years, until the conditions now confronting us have become almost intolerable. Judicial reform is a matter that has been very dear to my heart for a great many years, and I have paid considerable attention to it and given it considerable thought. My opinion in regard to particular systems has in different periods of my career undergone several changes. I want to say at the outset that I think that the people of this State have a right to look to this Bar Association for the solution of this problem, and that the duty and responsibility rests upon this Association to present to the next Legislature an amendment to the Constitution that will give us effectual relief from the intolerable conditions with which we are now confronted. It might not be inappropriate to suggest that one great trouble which has confronted us in the past has been that our bar has been composed very largely of members who have migrated here from other States, who have brought with them a fondness for the systems prevailing in the States in which they have practiced, and which they have brought with them, and consequently when we have endeavored to accomplish a judicial reform in this State we have been met with the various and diverse views and conflicting opinions advocated by these lawyers, who have endeavored to impress upon the judicial system of Texas the systems of the States, respectively, from which they hailed. But we must bear in mind that in accomplishing a reform of this character, whatever may be the conclusion arrived at by this Association, it should be the unanimous opinion of this Association, and that, whatever difference of opinion may exist between us now, we must make concessions, we must agree upon a plan, so that when the Legislature meets there will be presented to them the unanimous opinion of the Bar Association of Texas. We can never accomplish anything if each particular man is to remain wedded to his particular theory and is unwilling to make any compromise or any concession.

I confess that when I first came here and read the proposed resolution, it was so radical and revolutionary in its character that upon the first reading of it I jumped to the conclusion it was too revolutionary and absolutely impracticable. But since

I have been here I have read and re-read that proposed bill several times, and every time I read it, it struck me with greater and greater force, until now, so far as I am concerned, I am prepared to adopt it from the caption to the end of it. (Applause.)

That bill provides for a Supreme Court to consist of fifteen members. It consolidates the Court of Criminal Appeals and the Supreme Court and adds to it the Chief Justice of each of the nine Courts of Civil Appeals, thus reaching in that method the complement of fifteen judges to constitute the Supreme Court. The law then provides for the creation of not less than nine judicial districts in this State, the District Judges in those nine districts to consist of not less than seven members. In addition to that, in order not to legislate out of office any of the district judges or any of the two remaining Justices of each of the Courts of Civil Appeals, the two remaining Justices are made District Judges, so that none of these various officers are legislated out of office. The bill eliminates the Courts of Civil Appeals. The bill eliminates County Courts. It provides for Probate Courts and Magistrate's Courts, going down to the bottom, and for these several District Courts. Now, I am a great admirer of the Court of Civil Appeals, and I do not believe that there is such a conflict in the decisions of the various Courts of Civil Appeals as they are generally credited with having, and the Courts of Civil Appeals, so far as the courts are concerned, have done a very splendid work. But I believe that the Courts of Civil Appeals may be likened to a roadhouse, where every litigant and every lawyer is compelled to stop and sojourn for a period of three or four months, at great expense, whether he wants to stop there or not, in his journey to the Supreme Court. We are a fighting body of lawyers in Texas. I expect there are more cases appealed in Texas than in any other State in the Union, and the great bulk of our lawyers are never content until they take the case just as far as they can possibly take it. So we never start in the trial court with a case except that we expect to finally land in the Supreme Court of this State before we get through with it, and if we can take it to the Supreme Court of the United States we start in with the determination of taking it there. So, consequently, we are forced to tarry at this Court of Appeals whether we want to or not, at great expense, inconvenience and loss of time, to the layman as well as the lawyer.

The Supreme Court is divided into two sections by this bill, a civil division and a criminal division. The Supreme Court has the power to regulate and control these various divisions. No particular members of the Supreme Court will sit in any one of these particular divisions, or in the criminal division of the court. They are alternating. Another feature of this bill is that the members of the Supreme Court are required for as much as one month in every year to sit with the district judges in the District Courts, as a trial judge. That will lend dignity to the District Court. It will have a great tendency to straighten out the law and have a better administration of the law in the trial court than we now have. I can remember very distinctly what a great event it was considered by us lawyers when we could have one of the Justices of the Supreme Court of the United States to come down into the District Court or Circuit Court of the United States, and there sit with the District or Circuit Judge in the trial of local cases. It was a great event. It lent dignity to the court, and the result of the trials at that term of the court were eminently satisfactory, more satisfactory to the litigants and to the profession than when presided over only by the District Judge. Complete power is given to the Supreme Court to regulate and adjust all these various courts. For instance, the District Judges have got power under this bill to sit anywhere where they may be assigned by the Supreme Court. One idea of this bill is that a District Judge should not be permitted to any very great extent to sit in his own county and in his own district, thereby relieving him from local influence, which we know has its weight and its factor, because the judges at last are only human beings.

Now, gentlemen, if you will study this bill you will find that the Supreme Court is vested with the power of creating and constituting a judicial system in this State that will not only give us all of the relief we need, that will relieve us from the congested condition of our dockets, not only in the courts of last resort, but likewise where such congestion exists in the trial court. The beauty of this system, in my judgment, is its flexibility. I may use a more appropriate word than that—its malleability. Here we have got a Supreme Court consisting of fifteen judges, who are given an absolute unrestrained power to construct a judicial system for this State, not only as to the num-

ber of courts, but as to where those courts shall sit, and as to when they shall sit, and you give that court the absolute power to prescribe rules of pleading and procedure. This court has no power to make a law. The function of the Supreme Court is simply to construe the law. Now, somebody must devise a judicial system for this State. It has been suggested by one distinguished gentleman here that that should be lodged in the Legislature, and that the power should not be lodged with the Supreme Court itself. Now, I am absolutely opposed to that for this reason: The Legislature meets every two years. We generally have at each session of the Legislature 700 or 800 bills introduced. The Legislature is busy from start to finish. You could not appoint a committee in either house of that Legislature that could afford to be absent from the halls of legislation long enough to enable them to devote the necessary time to the preparation of a bill creating a judicial system for Texas. Hence, any system that would be the product of legislative enactment would be crude; it would be inconsistent; it would be inefficient. But if you lodge this power in the Supreme Court itself, the Supreme Court will formulate a system that will reach the evils and that will give us absolute relief from the conditions under which we suffer. Our Supreme Court now, I take it, Judge Hawkins, is about four or five years behind in its decisions, is it not?

JUDGE HAWKINS: It is hard to answer that in one way. It is behind considerably, but not so far behind on the application docket.

MR. WARD: I mean as to rendering opinions.

JUDGE HAWKINS: It is several years behind on the cause docket.

MR. WARD: My information is that our court is about four or five years behind so far as deciding cases is concerned, and not quite so far behind in the consideration of applications for writs of error.

THE PRESIDENT: I submitted one the other day that has been there four or five years, I am not quite sure which.

MR. WARD: It is not the fault of the Supreme Court Judges, because I personally know them all, and have known them ever

since the present system has been adopted, and I know there is not any galley-slave that works more industriously or harder than the members of that Court, and the clogged condition is due to the system we are suffering under, and not to the inefficiency, or I might say the failure, to work properly there. Now, I believe that our liberty cannot possibly be endangered by entrusting to fifteen Supreme Court Judges the duty of supervising all of the inferior judicial tribunals of this State, and themselves getting up a scheme that will afford the relief desired, not only in the court of last resort, but throughout the district courts of this State. I am heartily in favor of this bill and I want to say here and now that I have read it several times, and I have tried to study it and to master it, and I say that too much credit cannot be given Judge Dabney, the author of that bill, because it manifests great care, great thought, great labor, and a thorough comprehension of the situation, and the details that he has worked out there, in my humble opinion, can hardly be improved upon. At the proper time there is one amendment that I would like to suggest to the whole system. In a separate clause of the resolution, which is taken from the present Constitution, is a provision that in criminal cases the State shall not be allowed any appeal. I think that ought to be amended to this extent: That the State should not be allowed an appeal in criminal cases, except from a judgment sustaining a motion to quash an indictment. I think an appeal ought to lie from that. An appeal did lie under the Constitution of 1869 from a judgment quashing an indictment, and about two or three years ago there was an amendment to the Federal judicial code which gave a writ of error to the Government of the United States to the Supreme Court to review the judgment of the District Court in sustaining a motion to quash an indictment, but that law wisely provided, as should our Constitution provide, that pending an appeal the defendant should be released on his own recognizance, and at the proper time I will offer an amendment to that section embodying that idea.

I thank you for the courtesy you have given me in listening to me, and in conclusion I simply want to say that everybody realizes that the conditions under which we now suffer must be changed, that relief must be given. It is our duty here and now, by the unanimous opinion of this Association, to devise a scheme

that will give us that relief, and there never will be a better opportunity presented to the lawyers and the people of Texas to effect this reform than at present. We know, just as certainly as I am addressing you here today, that when the next Legislature meets there are going to be two resolutions passed by that body amending the Constitution. One is going to be the submission to the people of Texas of a constitutional amendment in regard to Statewide prohibition. There is no power that can stay the Legislature from the submission of that sort of a resolution to the people, to be voted on early next year. Another proposition that is going to come, whether we like it or not—I do not object to it myself—is going to be a resolution amending the Constitution so as to give the women of this State absolute and unlimited right of suffrage. That is going to be passed by the next Legislature and submitted to the people. The women all over this country are registering. The latest reports I have had since I have been here are that in my county nine thousand of them are going to vote in this coming primary, and the newspapers show they are exercising this right all over the State. If you get three hundred thousand or four hundred thousand women to vote in the primary, and that is a moderate estimate, they are going to bring to bear upon the Legislature so much power that the Legislature will not dare to refuse to submit to a vote of the people an amendment upon that subject. Now, we know we are going to vote early next year on two constitutional amendments. There is going to be a separate election for that purpose. Why not formulate our bill, and get it through the next Legislature, and give the people a chance to vote on three amendments to the Constitution instead of two? If we submit it then, I feel confident that whatever is the unanimous action of this body will be embodied in a resolution by the Legislature, and that the people will adopt it early next year, when they vote on these other amendments. I thank you. (Applause.)

MR. DABNEY: If it is permissible, I ask Judge Ward to write out the amendment which he has in mind, and let it be considered as a part of my report. It will obviate any motion. He can write it out and hand it to the Secretary.

MR. WARD: I will do that.

MR. G. N. HARRISON: Mr. President and Gentlemen: The only concrete objection brought forward to the resolution offered in its present form is the matter upon which I will offer the few remarks that I shall make. I think the judicature system outlined here meets with the general approval of those who are here. The concrete objection made is that it crystalizes the judicial system and takes from the Legislature the power to create those courts that probably ought to be created by the Legislature, in order to lend flexibility to the system. I do not think, in considering this matter, we should ever forget the essence of our constitutional form of government in this country; namely, that it is divided into three branches, the legislative, the executive and judicial. A Constitution, as I conceive it, is the organic law of a State, establishing the structure of its government, prescribing the distribution of its powers, and regulating the exercise of those powers. Experience has certainly taught the American people that it is wise to keep these three branches of government each sovereign, so to speak, within its own sphere. I cannot conceive of a judiciary being sovereign within its sphere that has its existence given by the legislative branch and terminated by the legislative branch. I think we have too many Legislature-made higher courts. One of the very strange things in our practice now is that we actually find this condition: That the judiciary, passing on a matter of substantive law, affecting the property rights or life of a citizen, must be blind to error that it clearly sees, unless that error be specified with a technical nicety, resulting from and required by legislation. The idea that the judiciary shall not see that which it does see clearly, unless the requirements of the Legislature in the matter of form of presentation are complied with, puts form above substance. I do not think that ought to be. I thoroughly believe that our judicial system, in all at least of its necessary and fundamental branches, should have its roots fixed in the Constitution. Therefore, I oppose the suggestion of my friend that any amendment should be made conferring power in that matter upon the Legislature. It is true, we have the effect of crystalization, but this describes so complete a system and is so arranged that it is self-functioning, that it occurs to me, as far as human foresight can see, we shall hardly need to mould it from time to time differently. If so, we shall find a way. Dr. Pound presented an il-



illustration that brought home to me forcibly our own constitutional structure and the blessings that we constantly derive from it. If a court is Legislature-made, knowing that its existence depends upon the Legislature, it will be more or less subservient to the Legislature, and in the great case of *Marbury vs. Madison*, I believe it was, Chief Justice Marshall laid down the principle that the judiciary might declare unconstitutional an act of the Legislature, thus making our constitutional fabric entirely different from that of Continental Europe, because there it was held, and here it was contended, that being co-ordinate with the judiciary, the Legislature had a right to construe for itself a law, and if it concluded it was constitutional, no other tribunal could review its conclusion. The result would have been that the Legislature could have legislated the Constitution and its chief benefits, at least, out of existence. So the rule is in England that Parliament is omnipotent, and in the illustration Dr. Pound gave of the man who found a certain notice under the law posted on his door, and went to the House of Lords with the case; there it was determined that because of the omnipotence of Parliament he had no right to complain, because justice had been meted out without judicial proceeding. I think we should always avoid the possible consequence of such an evil, and, therefore, I believe in the resolution as it is framed. I think that ought to be carried out, and that our courts should have their roots fixed in our Constitution. (Applause.)

MR. W. A. WRIGHT: Mr. President and Gentlemen: Like most lawyers, I have gone along under the present system, recognizing its defects and without trying to formulate in my own mind a remedy. The general objects of the resolution I heartily approve of. The suggestion made to this Association by Dr. Pound yesterday with reference to a proceeding in the nature of a motion for a new trial or in arrest of judgment by a competent *nisi prius* trial court, composed of more than one judge, struck me with so very much force that it seemed to me if any system was adopted under that suggestion, many of our appeals and writs of error would be done away with. I notice in the proposed resolution that it provides for a *nisi prius* trial by one or two or more District Judges or Supreme Court Judges sitting as District Judges, but there is no compulsion in the resolution for more than one judge in any trial at the forum. It occurs to

me that if it were mandatory that three or more of the District Judges sit upon a motion for a new trial or in arrest of judgment, many applications for writs of error would not be had, and if they were such men as the bar had confidence in, they would be content to rest their decision in their hands. Now, I am not going to offer an amendment, but I make the suggestion that if upon the application of a party making a motion for a new trial or in arrest of judgment, an application to the Chief Justice of the State, he should send to the county in which the motion is pending, along with the resident judge, two or more other of the judges, to hear the motion, it would probably be better, and that either the motion would be granted or the litigant would be satisfied. I am simply making that as a suggestion. There is another matter. The resolution provides for a probate judge, who shall be a lawyer or a judge of four years' experience. In three counties out in my country there is no single lawyer. In three other counties there is only one lawyer, and he is not enough lawyer to hurt; and yet in one of those counties where there is now no lawyer there is pending the contest of the probate of a will involving an estate of over \$300,000, and in the same county there are pending applications for administrations upon estates all the way from \$150,000 to possibly \$500,000 in value. They have no lawyers in the county, and while that is in a country peculiarly within my knowledge, I apprehend that elsewhere in the sparsely settled districts of the west you will find like conditions prevailing. Again, while the system proposed is a great one, we must recognize the fact that if you get it adopted, the lawyers are not going to do the adopting, but the people are, and when you take away from their hands the election of the Probate Judge and put it in the hands of the District Judge, you are going to get many votes against the system. (Applause.)

MR. W. C. WEAR: Mr. Chairman and Gentlemen: I do not purpose an attempt at any comprehensive discussion of the questions involved in this proposition, but I want to suggest in the first place that the suggestion made by Judge Ward with reference to submitting this question of an amendment to the Constitution at a time when the other two propositions will almost certainly be submitted to the people, is of greater importance than at first blush it would seem to be. In other words, it is of

importance in that the great difficulty in getting the people to adopt important and material amendments to the Constitution lies in the difficulty, in fact, the impossibility, of inducing the people to take sufficient interest in the proposition to come out to the election and vote. That difficulty will be obviated if this proposition is submitted at the time and under the circumstances suggested by Judge Ward, because the two questions mentioned by him will excite such universal interest and discussion as will impel—yea, compel—the people to come to the polls and vote. Another proposition suggested by Judge Ward occurs to me to be important, and that is the question of adopting some method to add greater dignity to the proceedings of the district courts, and I am persuaded that the idea referred to by him, as involved in this amendment, will tend largely in that direction. Also, I am not in accord with the idea suggested by some other of my friends that this should be left to the Legislature, because the Legislature, as it is universally constituted, is to my mind not competent to deal with this kind of a question. As far as that is concerned, you can take the ablest lawyers, and unless they have had some reason to have their attention called specially to this kind of question they would of necessity have to study the matter long and earnestly before questions of importance would occur to their minds, to say nothing of the matter of giving those questions a proper solution. There is another idea involved in this amendment that strikes me as having peculiar force, and it is very material, and that is the suggestion contained in the provision that results in these trials being had by judges who do not live in the county where the question arises. Nobody who has not had the trial of such cases, can possibly appreciate the importance of that. As an illustration of that question, if you will excuse a personal reference, when I had the honor and the great labor incident to presiding over a district court, I had this experience: A question arose which was of great interest to the community in which it arose. I knew that a great majority of the people were on one side of the question, and it came to my ears that if that case was not decided in its particular way, that majority would see that I was defeated at the next election. Now, I could not keep that from coming to my ears. Of course, there was no way to issue a writ of injunction against

that. Now, I do not know whether that influenced me or not—I can not tell—and I am not going to tell you how that question was decided by the trial court, but the majority appealed the case, and the Supreme Court held that the majority was right. I have never yet believed that the Supreme Court did right about it.

MR. BARWISE: What you heard probably affected you. (Laughter.)

JUDGE WEAR: Well, I can not tell.

MR. J. W. MCCLENDON: I want to discuss just for a moment the question raised by Judge Moseley as to whether or not the substance of this bill be embodied in the Constitution. This bill of Judge Dabney's has been before the State quite a number of years. I got in late this morning and I did not hear all of Judge Dabney's discussion, but I presume he stated the history of the matter. At one time it passed the Senate. It has been taken up by the University Law Association, which devoted one of its sessions to this bill, about two years ago, I think, and various committees of this Association have had the bill under discussion.

JUDGE W. E. HAWKINS: May I ask you a question? Do you refer to the bill as it is written here, in concrete form?

MR. MCCLENDON: I mean the general principles, the general outlines.

JUDGE HAWKINS: Is it not a fact that this bill has never had the consideration of any of these bodies, but that you mean to limit your statement in substance to the general proposition of a Supreme Court of fifteen, leaving out of view and not intending to include a good many details which are presented for the first time in this bill?

MR. MCCLENDON: I am not discussing the details. I am merely discussing the general outline of the bill.

JUDGE HAWKINS: So am I, but it has many features in it besides the Supreme Court of fifteen and the abolition of the Courts of Civil Appeals.

THE PRESIDENT: Mr. Dabney, you are familiar with the situation. What was the difference?

MR. DABNEY: Why, Mr. McClendon in a general way is correct, but there have been many modifications, very great modifications, since it was submitted to the Senate. And I want to state it was passed by the Senate by efforts of myself alone, nothing else behind it. I never tried to pass it through the House.

MR. MCCLENDON: I was not discussing the details of the bill, but the general outline, the general principles set forth as a system of reorganizing our judiciary. I know there are some attorneys in the State who are not present today, who have given this matter—not the particular bill here presented, but the general principles embodied in this bill, and as embodied in previous presentations of it by Mr. Dabney—a great deal of careful consideration, and who have come to the conclusion that it would not be wise to encumber our Constitution with the details of organization of our judicial system, and who are of the opinion that a simple amendment should be made to the Constitution, in line with the provisions of the Federal Constitution, which vests the judicial power of the State in one Supreme Court and such other courts as the Legislature may from time to time create, and prescribes the qualifications and the terms of office of the judges, leaving the other matters to the Legislature. I recognize the force of Judge Dabney's argument with regard to leaving matters of this sort to the Legislature. I am not prepared to say, however, that I fully concur in all of the reasons stated by him. I do not think that an indictment of our Legislature in as broad language as made by Judge Dabney is just. I am satisfied in my own mind that if it were not for the fact that our present Constitution prescribes the number of judges for our Supreme Court, we would today have a Supreme Court composed of a larger number of judges than three, and it is also my belief that if it were not for the fact that the Constitution creates the Court of Criminal Appeals and the Courts of Civil Appeals, those courts today would not be in existence. A great many of our bar have realized that one of the difficulties which we meet today in attempting to bring about any judicial reform is the fact that we are met by an inflexible Constitution, and that in order to get any relief, or any substantial relief, we are forced to go to the people with a constitutional amendment;

and while our Constitution can be amended every two years, we all know the difficulty surrounding the amendment of the Constitution, except in those matters relating to the pensioning of Confederate soldiers and other matters of that sort. Now, while I am not prepared to be committed absolutely either way as to whether or not the substance of this bill should be embodied in the Constitution, I believe that is a matter on which there is going to be some divergence of opinion from some of our best lawyers, who have already given this matter very careful consideration. Mr. De Bogory is one of the gentlemen who have considered this matter very carefully, and he is of the opinion that a simple amendment along the lines stated should be adopted. Mr. De Bogory, I know, has taken this particular matter up and discussed it with a great many of his lawyer friends, and he has, as I have stated, come to the conclusion that the matter ought not to be embodied in the Constitution. As stated by Dr. Pound in his address on yesterday, Texas is an empire in domain, but not yet an empire in population, and we know that, no matter how carefully and how studiously we might prepare a judicial system, in a State growing as rapidly as this State now is, it would only be a few years before actual practice would teach us that that system had its defects, and it seems to me that there is much force in the suggestion that any system which is embodied in the Constitution should have as much flexibility as possible to meet the rapidly changing conditions in this State, without having to refer again to the people for another grant of power.

THE PRESIDENT: Mr. Dabney, do I understand that the purpose of this amendment is to leave to the Supreme Court the creation of additional judicial districts as may be necessary?

MR. DABNEY: No, sir.

THE PRESIDENT: Who does?

MR. DABNEY: Judge Ward in his very able exposition of it—I think the Judge will agree with me—used the wrong word. He said something looking that way. What the Judge meant was to leave to the Supreme Court and the district court the functioning of the system, not to create.

THE PRESIDENT: Who will create under this resolution? Who will create new judicial district courts, new district judges and new districts, if they are needed?

MR. DABNEY: The Legislature, upon the nomination of the Supreme Court, upon the suggestion of the Supreme Court, can provide for additional district judges. The thing creates everything itself, but to function itself in a wider way is left to the district court and the Supreme Court. That is, for instance, the Supreme Court can call up district judges without limit to its assistance, and who will have the power of the Supreme Court.

MR. KIMBROUGH: Section 7 of the bill has reference to that matter. I will read it: "The State shall be divided into judicial districts by the Supreme Court, not less than nine in number, which may be re-arranged, diminished or increased by that court from time to time; but there shall not be less than seven district judges in any district, not counting any member of the Supreme Court sitting in the district court."

THE PRESIDENT: Then it does provide for the creation of new districts?

MR. DABNEY: Yes.

THE PRESIDENT: What I was getting at, Mr. McClendon, you have considered this bill quite carefully. Does not this bill leave in the Supreme Court, in effect, all the power you would leave in the Legislature, and as a matter of interest, as you have thought about it, I want to invite your attention to the proposition as to why it is better to leave to the Supreme Court of fifteen judges the creation of additional judges, rather than to the Legislature? (Applause.)

MR. MCCLENDON: I am not addressing myself to any of the details of the bill. I want that understood at the outset. I had in mind all of the matters presented by Mr. Dabney and the other gentlemen here. We have discussed this bill frequently, or at least, a number of committees. I have served on the University Law Association.

MR. DABNEY: The University Law Association approved it.

MR. C. S. POTTS: As secretary of the Law Association I can throw a little light on that. We approved the principle of the

bill and appointed a committee to confer with a like committee appointed by the Bar Association and one by the Governor, and instructed our committee to suggest as a basis for discussion the principle of this bill.

MR. DABNEY: And those three committees met, and after disposing of this temporary measure for the relief of the Supreme Court, Mr. Potts urgently wanted to bring forward this measure, but the lawyers had to go home, and nothing was done about it. Am I not right?

MR. POTTS: Yes, sir.

THE PRESIDENT: Does Mr. McClendon yield?

MR. MCCLENDON: Yes, sir.

MR. POTTS: The joint committee got together in January, 1917, as I recall, and we discussed at some length the temporary measure that was passed, providing for a commission to pass on applications, and that went through the Legislature at that time, you will remember, and is now in operation. The committee deferred action on the Dabney plan, but appointed a sub-committee to consider it and called the joint committee together last year before the meeting of the Bar Association. Judge Dibrell was made chairman. He was the general chairman, and he was made chairman of the sub-committee, and was to call the sub-committee and then the general committee together, but for some reason neither the sub-committee nor the general committee were gotten together. There was a call for the sub-committee, but it was never assembled.

MR. MCCLENDON: Yes, sir; that is the meeting I refer to. It was held in the Senate chamber.

MR. POTTS: But that meeting did not go into the substance of the bill.

MR. MCCLENDON: I recall I made the motion that referred the matter not only to the committee of the University of Texas Law Association, but that the Texas Bar Association and the Chief Justice of the Supreme Court, with the concurrence of the Governor, each should appoint a like committee. I know that was my motion, and there were other suggestions made at



that meeting. Judge Hawkins delivered a paper at that meeting, and my motion was to refer all of these matters to that joint committee, and the Bar Association did appoint its committee, and Judge Phillips did appoint a committee, with the concurrence of the Governor, and it was in this meeting in January, 1917, that the Williams bill was debated for a whole day, and unanimously approved. The Dabney bill was not debated—that is correct—at the meeting. However, I do not take it that the details of that matter are germane to the discussion, further than to call attention to the fact that this matter has been considered very maturely by a great many of the members of our bar, and there is some divergence of opinion with regard to whether or not the principles of this bill should be embodied in a constitutional amendment, or whether a simple amendment, as I have just stated, should be embodied in the Constitution, and the matter left to the Legislature.

JUDGE WARD: If you are right in your contention, what is the object of amending the Constitution? Does not the Constitution now state that the courts of this State shall consist of a Supreme Court, Courts of Appeal, and on down the line, and such other courts as may be created by law?

MR. McCLENDON: Yes, sir; that is true.

JUDGE WARD: Then why amend the Constitution at all?

MR. McCLENDON: Because you have got a Supreme Court that is a constitutional court, composed of three judges. You have got a criminal court of appeals, that is a constitutional court composed of three judges. You have got the Courts of Civil Appeals, which are constitutional courts, composed of three judges each. You have got to have those courts. Take for instance the Court of Criminal Appeals and the Supreme Court—they are practically co-ordinate courts, in regard to a great many matters. We had the spectacle in this State a few years ago of the Court of Criminal Appeals holding a certain law unconstitutional, I believe it was, and the Supreme Court holding it constitutional, or vice versa, and there we were operating for years under a system of that sort. We have today in a question which is largely a political question, in which a great many of the people of this State are vitally interested, the spectacle of

the constitutionality of a law being tested simultaneously in the criminal and civil courts of this State, with two proceedings instituted on the same day, one of which will go to the Court of Criminal Appeals, it is already before the Court of Criminal Appeals, and the other instituted in the district court, which will go to the Supreme Court, both of those proceedings designed to test the question of the constitutionality of the same bill. The trouble with the Constitution today, Mr. Ward, in the opinion of a great many of us, is that it is not sufficiently elastic. Now, it may be, without going into the details of the present bill, that Mr. Dabney's bill is sufficiently elastic. That may be true, but I believe it would be better for this Association, especially in view of the fact of the small number who are here present, and the fact that whatever we do, we want it to be practical, and we want it to bring practical results, I say I believe it would be better for us to pass a resolution to the effect that we endorse in principle this bill, leaving the question as to whether or not it shall be embodied in the Constitution or in the statutes to the Legislature or future committees, and that the President of this Association be authorized to appoint a committee, composed of one member of this Association in each Senatorial District of this State, whose duty it shall be to bring the matter before the Legislature. One of the great troubles with regard to our Association has been that when we have passed resolutions here that has been the end of them. They have died right here. That has been largely because it has not been anyone's business in particular to see that those resolutions were carried into effect. Now, if we do adopt in principle this bill, I think we ought to put in motion some machinery that will carry it out. I believe that the Executive Department of this Government should be interested in adopting our resolutions in this matter, and I think if the matter is properly presented to the Governor the recommendation of this Association will meet with his endorsement. That was one of the reasons for appointing this joint committee two years ago—the fact that mere resolutions adopted by our different associations usually died. There has been a great deal of valuable work done by committees of this Association, but it has not borne fruit in a great many instances, merely for the fact that it has not been followed up. Consequently, this plan of having these three joint committees, one of which was ap-

pointed by the Chief Justice of the Supreme Court, with the concurrence of the Governor, was in order to get the highest court in the State and the Executive Department interested in whatever that committee should do. I believe that if we are going to pass any resolutions at all in regard to this matter, we should back them up by a committee.

THE PRESIDENT: Would not a motion of this kind come after this matter is disposed of?

MR. McCLENDON: I was going to make this substitute motion to the motion to adopt the report.

MR. KIMBROUGH: Write it out.

MR. McCLENDON: That is all I have to say. I will write it out.

MR. POTTS: Mr. President and Gentlemen of the Association: I have had considerable opportunity, as a student of government and court machinery, and as an assistant in a way to the Legislature, for I worked for two years as a sort of legislative reference librarian at the capitol, to observe the operation of the Legislature, and at first I was much inclined to the position taken by my friend, Mr. McClendon, in regard to enacting this measure as a constitutional amendment. It seemed to me that the detail of the measure as drawn up here by Mr. Dabney was better suited for the Legislature as a bill than as a resolution to go before the people. But, Mr. Chairman, the truth is that the Legislature has an extremely small amount of time to devote to a careful study of legislative matters. It has sixty days in which to legislate on the interests of five millions of people, scattered over an empire, and it is an impossible task.

THE PRESIDENT: You mean at five dollars per.

MR. POTTS: At five dollars per, and they stop when the per stops, you understand. It is an impossible task, and the result has been that we have had an average of about three special sessions of the Legislature for each Legislature since 1900, to keep up with the work. So the Legislature is overstrained for time to do the work, and I believe if we put this matter up to the Legislature we are inviting a botched job to a considerable extent.

If we could persuade them to take something that had been thought out and laboriously worked out by carefully appointed committees, we might get something that would be fairly permanent and fairly well digested to present to them, and if we could persuade them to put it through it would probably be effective, but they always want to go into it, of course, and it would come out in such shape that we would not recognize it, in all probability. Now I want to call the attention of Mr. McClendon and other members of this organization to this fact: That in this measure as Mr. Dabney has drawn it, he puts in this expression, "until otherwise provided by law," and that if it goes through in such a shape as that it furnishes the flexibility that Mr. McClendon and my friend Mr. Moseley seek to incorporate in the measure. It fixes the thing until the Legislature shall be convinced that something else is necessary. It says there shall be a court of fifteen members, until otherwise provided by law. That leaves it free, as soon as the Legislature decides that fifteen members are too many, to reduce the number to what is necessary. I grant that it would be extremely bad business, because it is very difficult to amend a constitutional provision, to write an unamendable provision for the courts into our statutes, and we would make a great mistake, but if we will watch it as we go along, by putting in clauses of that kind, it will preserve the general outlines of the measure, and at the same time furnish flexibility that will enable it to meet the growing needs and the changing conditions of the State and the litigation in the State, as time goes on.

MR. CARRIGAN: May I ask you a question?

MR. POTTS: Certainly.

MR. CARRIGAN: As you understand, the conditions that exist in one part of the State do not exist in another. I have not read the bill carefully. Does it provide for the Supreme Court judges to be elected from districts, or elected from the whole people?

MR. POTTS: From the whole State at large.

MR. CARRIGAN: I do not find that in there, how they are to be selected.

MR. DABNEY: The whole State elects the Supreme Court judges, and the district judges are elected by their districts.

MR. POTTS: There are to be not less than nine districts. That leaves it flexible. The Supreme Court can increase the number of districts as may be necessary. There are to be not fewer than seven district judges in each district. That leaves it flexible again, to expand the number of judges as may be required. So there is a large amount of flexibility in this measure. It only fixes the general outline of a trial court, leaving out the detail of the petty justice courts. It fixes a nisi prius court, and then one appellate court, and it seems to me that those are the essential elements that we need in our system, and it eliminates this way-station that is spoken of, and furnishes a straight ticket from the lower court to one appellate consideration of the case. Now I want to call attention to two or three other provisions of the measure, that it seems to me are very wise. Mr. McClendon called attention a moment ago to the ridiculous situation in this State that we have two Supreme Courts, neither one of which can review the decisions of the other—our Court of Criminal Appeals and our Supreme Court. We have had two questions, at least, in this State, where these two courts were diametrically opposed. One was the Galveston charter, in which the Supreme Court said that the charter was absolutely good, and the other was the Court of Criminal Appeals, in which the criminal ordinances of the city of Galveston were held to be unconstitutional. And so we had a condition there in Galveston, you remember, that was both constitutional and unconstitutional at the same time, and we had no remedy for it.

THE PRESIDENT: The whole charter?

MR. POTTS: The whole charter, of course, was void according to one court and absolutely valid according to the other, and we had no way to remedy it at all. The Legislature met the situation by changing the form of the charter to meet the requirements of the Criminal Court. Then we had the ridiculous situation in the pool hall case of one court saying it was void and the other court saying it was absolutely valid, and one court issuing an injunction to prevent a district attorney or county attorney from prosecuting cases arising under the law, and the other court enjoining the district judge from enforcing his injunction against the county attorney. Now, isn't that a ridiculous situation to have in an intelligent community? This bill

remedies that. It provides, of course, for two sections, but whenever a difference arises between the two sections, it can be settled in a few hours' time by the court sitting in banc, and the majority opinion, of course, would be the opinion of the court. Now, another thing about this matter: It puts an end to the terms of the court, as I understand it. There is no greater single defect, it seems to me, in our system, than bringing the wheels of justice to a standstill for three months every year. The trial courts perhaps do not stop quite so long, but the Supreme Court, three or four years behind, is now absolutely helpless. Although these judges would like to work and go right straight ahead, they are helpless and cannot go on with the processes of justice in this State. These cases—your cases, gentlemen—are waiting there four or five years behind, and yet we tie the hands of our judiciary. Now, our Supreme Court ought to work every month in the year, and every day in the month, except holidays. It ought to be arranged, of course, that each judge should have his vacation. But it should not stop the machinery of justice at all. These vacations should be taken at different seasons of the year, so that the court will grind on unceasingly as long as grist is to be ground. Then just think of leaving a man in jail while the trial court suspends operations, deprived of his rights and liberty, while we go off on our vacation. It may seem a very small matter, but I think it is a very important matter. It is certainly very material to the litigant who has his property and personal rights at stake. There is one provision in this bill that seems to suggest a term of the Supreme Court. If you will allow me to suggest, I think that that provision ought to come out. It sits from September to June, I believe.

MR. DABNEY: Let me interrupt just a moment. Some gentleman came to me and suggested that the Supreme Court be required to sit unceasingly, or until the business was disposed of. I said that I did not think it was fair to the Supreme Court, but that the Supreme Court might sit at its own discretion after the end of June, and it provides that the court shall sit from the first Monday in September of each year until the last Saturday of June in the next year, and then may sit at any other time if it shall so decide.

MR. PORTS: There are one or two other points I want to call

attention to. Thirty years ago Bryce in his "American Commonwealth" put his finger on the greatest weaknesses of our State courts. He came to study this system, of course, with his unusual ideas and peculiar opinions. The weak things in our system attracted his attention, and he was absolutely astonished at the inefficiency of our State courts, and he analyzed it and he said the trouble was, first, the method of election, second, the short terms, and third, the wholly inadequate salaries that we paid our judges. This bill corrects some of those errors, at least. The method of popular election is still retained, but the terms of office are extended very materially, ten years for the Supreme Court, I believe, and what is the length for the trial court?

MR. DABNEY: Eight years.

MR. POTTS: So that we remedy this evil to a large extent, and give the judges time to learn the judicial business before they have to go out and be confronted with a re-election. Generally an advocate is not a good judge, and it takes time to get out of the mental attitude of the advocate into the mental attitude of a man on the bench, and this length of time will vastly improve the system. It provides for a much more adequate salary than has heretofore been provided, and in addition to that it leaves it flexible, so that the salary may be increased as the Legislature may determine, from time to time. Now, gentlemen, if I might throw out a suggestion that is not in this bill, it is in regard to the retirement of judges. Just pardon me a moment, if you will, Mr. President, while I call attention to a plan that has been worked out by the American Society of Judicature. In fact, they have suggested that in the place of electing judges we elect merely the Chief Justice of the Supreme Court, and leave him to appoint the other judges of the court. Then they make the suggestion that at the end of stated periods of time, say every six years or every eight years, these judges be required to stand, not for re-election, but to stand on their record, and allow the voter to pass judgment as to whether these judges shall remain on the bench or not. Mind you, it is not allowing A to become a candidate against B, B being a judge on the bench at the time, but merely whether B shall be retained on the bench, and if the judges say he shall not, then the Chief Justice pro-

ceeds to fill the vacant place by appointment. I do not know whether this system would work well or not, but I throw it out in this connection as one that will pay you to think about. And, by the way, Mr. Chairman, if I might make one further suggestion, I do not know whether the members of this Association have been in touch with the literature that is being produced by the American Judicature Society. If they have not been, they will find, I think, in those pamphlets the best thought that is being produced in America today on the reorganization and the perfecting of our court system. I believe our distinguished visitor is a member of the Board of Directors of that organization. They publish a number of pamphlets including a quarterly journal, and it may be had by anybody who will send in his name to the Secretary.

MR. CECIL H. SMITH: I would like to ask you a question before you take your seat, Dr. Potts. It has been frequently suggested by members of this Association, in regard to the flexibility of the Constitution, and as to an amendment in regard to the judiciary, that an amendment somewhat like the provision in the Federal Constitution would be more desirable than any that has been suggested, to the effect that the courts of the State should consist of a Supreme Court and such other courts as might be created by law, or such other courts as might be provided by the Legislature, and such salaries as might be fixed by law, in other words, exceedingly general. What would be your idea as to the suggestion of a constitutional amendment in comparison with this simple, short one, making very latitudinous, indeed, all the provisions of detail as to the courts?

MR. POTTS: In answer to that, Mr. Smith, perhaps you were not present at the beginning of my remarks. Mr. McClendon had spoken to that question, and I answered that while I think that is desirable, and that while in general our constitutions are much too long, and much too detailed and make rigid things that ought to be left flexible, yet over against that is the fact that this document itself provides for the very flexibility that the amendment you suggest would furnish, in that at every point almost where it would be desirable to vary it, it is stated that it shall be as here stated, until otherwise provided by law. For



example, there shall be fifteen members of the Supreme Court, until otherwise provided by law.

THE PRESIDENT: I think you are mistaken about that.

MR. DABNEY: No; it is on the first page, and Mr. Potts is correct—fifteen, including the Chief Justice, but, if you will permit me, it can be enlarged by the Supreme Court by calling up district judges. But with that single exception, if you will permit me, Mr. Potts, the provisions "otherwise provided by law," relate to the increase of salaries, or expense accounts, and that sort of things, and perhaps to some matters of procedure, but the general plan stated there is beyond the legislative power.

MR. POTTS: Yes; that is true. Still, it places it in the hands of the Supreme Court to vary the number of the districts, and, with the consent of the Legislature, the number of judges in the several districts.

MR. SMITH: I get your point, but the proposition with me is, do you think it is more desirable to expand the amendment as suggested there, by some character of suggestion to the Legislature, than to use the simple provision I mentioned?

MR. POTTS: If the Legislature had time to go into it and work it out carefully, this would be a very proper measure to present to them, with such changes, of course, as we might care to make, for their consideration as a bill, but it is doubtful in my mind whether it would get the consideration as a bill that it ought to have.

MR. McCLENDON: Won't the same Legislature have to discuss this measure as a constitutional amendment?

MR. POTTS: There is much force in that suggestion. I have thought of the inconsistency of my position already. As a constitutional amendment, of course, it will have to be considered by the same Legislature.

MR. HARRISON: May I ask you a question before you take your seat? Is it possible in your judgment to create a self-functioning judiciary without a comprehensive constitutional provision?

MR. POTTS: It is very difficult for me to conceive of an arrangement by which the courts would have the freedom that is here suggested, without some such provision in the Constitution, guaranteeing them flexibility.

MR. BARWISE: May I ask a question? I am impressed, from what I hear, that the system is very complete, but that is only one question we have got to deal with, if we get any reform. The other one is as to the probability of being able to get the voters to vote favorably on any reform. Is it not probably true as a matter of practical politics, if you were to put up this system proposed by Mr. Dabney, that it would almost certainly result in the people voting down the constitutional amendment to carry that, whereas, if you put up the simpler proposition of one Supreme Court, to be constituted of not less than say five members, the further details of which shall be worked out and provided for by the Legislature, that the people, recognizing that we are greatly delayed in matters of litigation, would vote such a brief, general constitutional provision, and would be afraid to vote the other, or would not do it? In other words, the burden of proof is always greater on him who undertakes to pass a constitutional amendment. The inclination of everybody is to vote against a constitutional amendment. Now, I am inclined to think, for the benefit of whatever it might be worth, in passing upon the one system suggested by Mr. Dabney, or the other suggested by Mr. McClendon, that the simple one, that merely proposes a constitutional amendment providing for one Supreme Court of not less than a certain number of judges, referring the details to the Legislature, would carry. I am further inclined to think that one such as is proposed here, with all these details, would meet the opposition not only of the laity but of a great many lawyers, and I would like to know your views about that.

MR. POTTS: I am inclined to think that the point is pretty well taken, if I may express a personal opinion. It is undoubtedly true that one person will object to one detail, and another person to another detail, and you multiply your opposition by the number of details you have to defend. And yet if you can show that the system you have in mind is going to effect a real reform, you gain strength that you might not get

if you went to the people with a blind proposition, more or less. They will say: "Show your hand. What are you going to propose instead of it? You are coming to us with a blind alley proposition, and we would like to know what sort of system you are going to propose in its stead." I am not sure, in other words, whether the one argument or the other would prevail.

THE PRESIDENT: Right in connection with your last statement, what, in your study and your knowledge about the situation, is the difference between the way that people in Texas present constitutional questions and referendum questions to the people of this State, and the way the people of California or these other Western States do it, in the matter of advising the people? Or, to put the matter differently, in your observation in this State, outside of the prohibition amendment or some quasi-political amendment, do you recall any constitutional amendment that has been submitted by the Legislature and has ever been intelligently submitted to the people and urged before them?

MR. POTTS: That is one of our faults. We pass our amendment resolution and then leave it. It takes an organized propaganda behind any movement that does not provide for the pensioning of the Confederate veterans, or something of that kind, to get it through. And if I might refer to a remark made by Judge Wear, it would be this, that we ought to tie this amendment up to other amendments with great caution, if we want this amendment to get through. The amendment he refers to may be popular, but my study of the elections and constitutional amendments that have been proposed in this State and other States is that if you link several amendments up at one election, and some one of them is particularly obnoxious to the people, the meritorious measures will be pulled down by the voter on account of the unpopularity of one of the measures. You must be sure, therefore, it seems to me, that if you are going to be tied up with any other amendments at all, that they be amendments that are pretty sure to be adopted by the people, and my judgment is that it will be bad to tie this amendment to the prohibition amendment, that is, at the same election. It will have nothing to do with it, and yet in the mind of a voter it

does have, and when you get him in the objective mood he is going to vote down your amendment, as well as the other.

THE PRESIDENT: They are going to vote for the other two amendments, however.

MR. POTTS: That is true, and it is only my suggestion that it might be well to avoid tying it to political amendments.

MR. McCLENDON: Here is my substitute.

THE PRESIDENT: Here is what is offered as a substitute. This is a substitute for the motion to adopt the Dabney report.

MR. MOSELEY: I second the adoption of the substitute.

MEMO: Mr. McClendon's written resolution could not be found when the meeting adjourned, although a thorough search was made for it. He promised, on request, to send the reporter a copy, and he has been written to for it.

After the further discussion shown herein, the McClendon resolution was defeated.

JUDGE HAWKINS: I want to make a suggestion with regard to the form of the resolution. I have no desire at this time to discuss the merits of the question, further than to say that I realize it is of very grave importance, and we can hardly reach a correct conclusion here on so many features of it, and that what is known as the "principle of the bill" seems to address itself to some minds in one way, and to some in another. I apprehended when I made my interrogation of Mr. McClendon a while ago if he endorsed the bill in principle, that he had in mind principally the abolition of the Courts of Civil Appeals and the increase in membership of the Supreme Court to fifteen. Now, to my mind, the endorsement of the bill in principle is divisible into a great many parts, because there are here what I call principles, just as radical and just as far-reaching as what he terms, or what I assume he terms, the principles of the bill, and many features here that I would like to have the deliberate judgment of the State Bar Association and its members on before they pass on those principles. The thought in my mind is this: that instead of spending further time in elaborating the discussion as to these principles wrapped up in this bill, and instead of endorsing the bill at all, that we have the chairman

appoint a committee of five, who shall have general charge of the matter, and to that committee shall be referred this Dabney bill and report, and any other suggestions or recommendations that any member of the Association may care to submit to the committee between now and the meeting of the Legislature, or a meeting with the committee from time to time, and that that committee shall digest the whole matter and work out and present to the Legislature a bill for the amendment of the judiciary article of the Constitution giving the committee, if you please, full liberty in the premises, and not binding them by any recommendations, and permitting what I am sure are valuable features in many portions of the Dabney resolution to stand on their merits, and leaving what I am sure are very unfortunate provisions of the Dabney bill to be considered by the committee, without our attempting to thrash them out while here and pass judgment on them, and at the same time leaving the committee free to consider any and all of the various recommendations which may be made by individual members, and to go back and take your list of papers that have been read before the State Bar Association during the last thirty years, a list of which will be found in this book, taking the recommendations that have been made by the Bar Association at its annual meetings for thirty years, surveying, if you please, the entire field, taking full time for deliberation and for the proper consideration of a judiciary amendment, presenting that to the Governor for his consideration, and then to the Legislature for its consideration, and in the event of the adoption by the Legislature of an amendment which meets their approval, to take charge of the campaign of presenting that to the people of Texas, because I am convinced that if ever the Bar Association of Texas gets its mind down deliberately, like we have all been trying to do here this morning, and adopt a judiciary amendment, or a recommendation to the Legislature for submission to the people, and the people are acquainted with the merits of that bill, they will vote it overwhelmingly.

THE PRESIDENT: What assurance have you that a committee of five will adopt a bill that will suit the Association?

JUDGE HAWKINS: I think that with these papers a committee can be depended upon to come nearer to working out a true solution of the difficulty than this committee of the whole can

do here in the limited time at our disposal. I am perfectly confident that that would result. If that is not to prevail, if the house insists upon a vote on the adoption of the Dabney report and bill, then I want to ask the indulgence of the body for a few remarks on the merits of it, but I want to avoid that sort of thing. I do not care to obtrude my views on the Association. I have undertaken to frame and have put in type an amendment to the entire judiciary article, reflecting the best thought I have been able to give the subject in twenty-five years as a practitioner, and five years as a member of the court of last resort. I am confident it has certain merits. This bill presented by Brother Dabney carries valuable suggestions, which I would be glad to see incorporated into the Constitution, some of which, if I were drawing the bill now, my own tentative draft of that judiciary article, I would embody into the draft, but there are features in this bill, gentlemen, which are dangerous, and which ought not to be endorsed by this Association.

MR. DABNEY: This is not presented now, but in the event that this Association should adopt in principle the resolution submitted—

THE PRESIDENT: Have you a resolution to present?

MR. DABNEY: Not to present, but a part of my argument, that I will present later on. Only in the event this is adopted in principle, I move that the President of this Association appoint a committee of five members to present the resolution adopted in principle to the Legislature, and who shall not be appointed unless they agree to support earnestly the resolution before the Legislature; that this committee be authorized to make all changes promoting the principles of the resolution adopted, and to determine whether probate judges shall be elected or appointed, and shall always be lawyers; and also to provide that motions for new trials shall be passed on by three judges when practicable.

Now, if what Mr. McClendon proposes here, and Judge Hawkins proposes should prevail, it means indefinite postponement, and nothing else. There will be nothing in this resolution as representing the lawyers of this State, but simply something brought forth by a committee. We cannot throw this thing down to the Legislature like suggested by Mr. Barwise and Mr.

Moseley and Mr. McClendon. That will ruin the whole thing. We might just as well quit. We have taken off all restraints upon political interference with the judiciary. Any court can be created and any court can be abolished by the Legislature. Mr. McClendon is mistaken in saying I criticised the Legislature. I was criticising the limitations under which they operate. Every Representative and Senator would be under pressure from his political supporters or friends, or what not, to create more courts or abolish courts. The time of the Legislature to an immense extent would be taken up necessarily with intrigue and log-rolling over pulling down and putting up and dislocating the whole machinery. That I submit, gentlemen, is a hopeless proposition. Now, Mr. Barwise says that some simple measure submitting this to the Legislature, the De Bogory resolution, or what not, would carry more probably before the people. I do not think so. The people are sore. They are suspicious. They are critical of all political pulls and holes, and largely justly so. They vote down constitutional amendments, even when they are meritorious, but this would have the support of the most influential body of the State of Texas, to-wit, the county officers. They have more influence than any other men who hold public office in the State of Texas. And it would have the support, I believe, of the great body of the judiciary. I just want to say that in reply to Mr. Barwise. Now, gentlemen, I did not intend to say anything more, but year after year we get together, and we debate. Year after year, Mr. McClendon, who is a special friend of mine, proposes to refer whatever is done, to another committee. This thing has been under agitation in this State since 1912, and I do not think that this Association should commit itself in detail, but if we resolve and quit, like we have resolved so many times, I think it is perfectly, absolutely hopeless. It is a thing that is futile, no use to be done in any respect, unless we adopt something embodying positive principles. They ought to be criticised, there ought to be committees to carry out those principles, but unless we do stand for some principles, if we do refer it again, as proposed by Judge Hawkins and Mr. McClendon, we might as well say to ourselves: "We agree that nothing should be done."

THE PRESIDENT: You do not seem to understand Mr. McClendon's proposition.

MR. DABNEY: He wants to leave it open for work before the Legislature, to preserve the principle, how? He preserves the principle, Mr. McClendon does, by referring it to a committee to bring in a bill to establish a Supreme Court, and after that is carried on the Greek kalends five years or ten years, to bring at some future term of the Legislature a bill to ask the Legislature to embody this, so far and so long as they may please. Mr. McClendon's motion involves indefinite postponement. Your committee will probably be dead, for they want to present this as a legislative matter, after the people of Texas have opened up the Constitution, so as to submit the whole matter, except the Supreme Court, to the Legislature.

MR. BARWISE: What is your new proposition now?

THE PRESIDENT: Do you offer this as a substitute?

MR. DABNEY: No, sir.

THE PRESIDENT: The Chair will rule that the matter cannot be presented unless it is presented as a substitute. We must have something to go ahead on, or we will never get anywhere.

MR. DABNEY: You are entirely correct in your ruling. I offer it as a part of my argument why that substitute should not be adopted, saying to the gentlemen here present that if they adopted this other matter in principle, then I would offer this so as to afford the necessary flexibility in pushing this matter before the Legislature.

JUDGE HAWKINS: I move the adoption of this resolution:

"Resolved, that our President appoint a committee of five to consider the Dabney bill and report, and any and all former recommendations adopted by this Association, and any and all papers heretofore presented to this Association on the subject, and any and all suggestions which may be submitted to said committee by any member of the Texas Bar Association, and to prepare and present to the Governor and to the next Legislature a bill submitting to the people an amendment of the judiciary article of our State Constitution. Said committee shall also be charged with the duty of aiding in the presentation of such proposed amendment to the voters of the State."

THE PRESIDENT: Do you offer that as an amendment to the substitute?



JUDGE HAWKINS: I offer that as a substitute for the whole.

THE PRESIDENT: Mr. McClendon's resolution has been seconded, as I understand.

MR. KIMBROUGH: I would like to hear the reading of the McClendon resolution.

(The McClendon resolution was read.)

MR. KIMBROUGH: Do you mean to carry forward a bill giving effect to the principles of this resolution?

MR. MCCLENDON: I think that is what I intended.

MR. CARRIGAN: I am in hearty accord with this constitutional provision as presented by Brother Dabney, but I was struck with the remarks of Mr. Wright, and I want Brother Dabney to listen to my remarks. I was struck with his remarks, and had it not been for the remarks of Mr. Wright I would not have spoken to it, because I am in accord with it. You have gone into particulars. There is one matter he called your attention to, which I think was a very important one, and it illustrates the point that I have in mind. I asked a question of Mr. Potts, and he did not seem to catch the point. Now, this State should be divided, if we have fifteen judges, into fifteen supreme judicial districts, and one judge should be elected from each of those districts. I give this as a matter that I think should be considered by you, because in the first place, the lawyers and litigants, as well as the citizens, in Northwest Texas would have no earthly means of knowing, except by rank hearsay of the third and fourth degree, the qualifications of a man from Beaumont, and likewise a man over in the coast country, likewise a man from East Texas and from West Texas and Central Texas. If you would permit the judges to be elected from these supreme judicial districts over the State, the people could better acquaint themselves with the qualifications of the judges and their capabilities, both as to intellectual capacity and accomplishments, and as to moral attainments. It will prevent the thickly settled portions of the State from electing all the judges. In addition to that, it will enable us to get men closer to the people. It will have another effect, which I think is the best, appeals to me as the strongest. There is a condition of affairs that exists from the cross timbers here to our east to New Mexico, and then south to the

Rio Grande, and that is the litigations arising in regard to school lands. You take a man from Central Texas, and he knows about as much about that as he does about the nebular hypothesis, and his judgments and decrees are ludicrous, when it comes to their practical enforcement. A man who lives in the western portion of Texas, where the school lands are situated, and knows the practical results of a decision, would render a decision that would be practical, and if you had a man on the bench from that section of the country, he would understand what it was about. But let a man from another section of the State render a decision, and sometimes you know what it is about, and sometimes you do not. Sometimes it is practical, and sometimes it is not. The same thing, of course, in reference to East Texas, where they have litigations in regard to timber rights. What would a man from West Texas know about timber rights? He would not know as much as a billy goat. Again, if all the judges were taken from Northwest Texas and placed on the Supreme Court, what would they know about the rights of people who were engaged in the rice and sugar industry? What would they know about matters that arise in reference to the coastal affairs of Texas? Again, there are sections of this State where they are engaged largely in irrigation, the dry belt. A man rendering a decision in regard to irrigation, who was from East Texas, where it rains every other week, would know absolutely nothing about it. A man from Central Texas would not know what he was talking about. He would not understand the lawyers and the witnesses, and would not understand their terminology. The same thing applies in regard to the great cattle belt and the great oil industry. It is true that the oil industry has extended now so that it would be hard to get a man upon the Supreme Bench who would not understand something about that industry, but there are two or three lawyers present who have tried to argue cases in the higher courts in regard to oil matters, and I have had one Court of Civil Appeals, consisting of three learned judges, tell me that they never before in their lives saw an oil lease, and did not know what it was about. In order to obviate that, I think there ought to be supreme judicial districts, so that you could get men from all over the country, who have had experience all over the country, and it will prevent the criticism I heard a lawyer make one time in regard to a decision of

one of our supreme judges about a matter that he did not know anything about except from hearsay. The judge that wrote the opinion was a very good fellow, but he knew nothing about what he was writing about, and this lawyer said that that judge and all Supreme Court judges ought to be required, after serving one term on the appellate bench, to plow corn for at least four years before going back on the bench again. I think that is a practical thing, because we want to have rules of property laid down that are practical rules, that the people can be governed by, and that will prevent people from being checked in lawful and legitimate enterprises. Decisions which will prevent legitimate trading and which stop the wheels of commerce are unjust to the citizenship and unjust to this State and its development. (Applause.)

JUDGE WEAR: I move we adjourn until two o'clock.  
(The motion was seconded and carried.)

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#### AFTERNOON SESSION—JULY 5, 1918.

The convention was called to order at two o'clock p. m.

THE PRESIDENT: I declare the session open, and we will proceed with this debate.

MR. HARRISON: Mr. President: In view of the fact that a considerable amount of detail business and some reports have to be attended to, and the closing session will be crowded, and knowing that I express the desire of everybody present in so doing, I move that after we shall have heard from Dr. Pound at length on the question now before the Association, that thirty minutes additional be allowed for general debate, and then the debate close and we vote.

MR. SANFORD: I second the motion.

THE PRESIDENT: Shall that be divided equally between the parties?

MR. HARRISON: The presiding officer can adjust that.  
The motion was unanimously adopted.

THE PRESIDENT: It is our pleasure always to hear from Dr. Pound. (Applause.)

## ADDRESS BY DR. ROSCOE POUND.

*Mr. President and Gentlemen:*

Getting up here to speak in this way immediately after devoting my careful attention to luncheon, I feel like one of my students the other day, to whom I addressed ten trifling questions on equity. I allowed him four hours to answer these ten trifling questions, a little matter of 25 minutes apiece, and left him in charge of a proctor, and went about my business. After three hours and a half the proctor appeared with the examination book. I looked at it and it did not seem to contain much of anything. Finally on the flyleaf I found this: "After studying upon and reflecting upon these questions for three and one-half hours, I have come to the conclusion that I have nothing to say." (Laughter.)

I think the ground has been very well canvassed, and I do not know that I have a great deal to say; but the thing that comes to my mind first, and seems to me to be most important, is that on very carefully re-reading Mr. Dabney's proposition last night, and listening to what has been said this morning, I feel more and more that that is a remarkable and admirable production. (Applause.) I have been studying projects of this sort for many years. In fact, I first urged this matter as far back as 1906 before the American Bar Association, and I think I have read all the projects that have been advocated, and I do not know of any one that approaches this in its conservative radicalism, if I may put it so, its soundness, its sense for necessary compromise that do not affect the principles, and its thorough-going carrying out of what seems to me to be the sound principle that should govern this matter. I do not believe that any state in the Union would begin to have such a judicial organization as you would have in Texas with a measure of that sort.

As to some of the matters that have been urged, I think at the outset we ought to reflect upon the dangers of a sort of pessimism to which lawyers are prone. The legal and judicial history of this country is full of examples of the dangers of that pessimistic attitude. There is nothing that has so promoted the eternal legislative tinkering with petty details, that is the bane of our law, as the proneness of lawyers to postpone the day of action. The classical example of that is in New

York. The crucial period in our American legal history, I might say, was the New York constitutional convention of 1846. That gave the great impetus to the elected judiciary. That inaugurated the practice of legislative dealing with the details of procedure. That came very near giving New York a complete civil code; and more than any one else, that great lawyer, Nicholas Hill, was responsible for the evils that ensued, because he was not willing to do anything, for fear that he would not do exactly the correct thing. He encouraged people who were not competent to take hold of the situation and do something, no matter what, because he was not quite prepared to do anything. Now, I should be the last to do anything bad in order to do something. That is the bane of our lay law-making. But, on the other hand, it receives most of its aid and comfort from those who are not willing to do anything short of an ideal perfection that they have not got the time nor the leisure to develop in its details.

Let us see what happened in New York. Nicholas Hill was not willing to go upon the commission to deal with procedure in New York, because he was not satisfied that the kind of men that would be on the commission would be such as would work out the proper sort of reform. The result was that New York has developed a system of procedure which, in its detail, in its cumbersomeness, in its complexity, in its mechanical features, goes beyond the record made by your complex organization here, in the matter of judicial organization. They have a code there of not less than 3400 sections, that, as has been said, governs every action of the court from the time he goes into the court room, except telling him the peg on which he shall hang his hat. That brings me to the next proposition, as to what has been said, and very justly said, about the necessity of preserving flexibility of organization. It is true you cannot have in a certain way, too much flexibility; but there is great danger of getting the wrong-kind of flexibility, and that is exactly what has happened through legislative regulation of details. (Applause.) Take the matter of procedure. The New York Code of Procedure laid down a rule for everything—and that has been a policy in New York since Throop's Code beginning with 1873—and flexibility is reached by amendments at every session

of the legislature. So you do not get any flexibility in the way you ought to get it, but you get infinite flexibility in the way you ought not to get it. The other course was taken in England. Lord Selborne, in the schedule to the Judicature Act, laid down something like 100 rules of procedure, simple rules, but going into detail in some places where it was needed, with the proviso that those should stand until abrogated, and then with a provision whereby the judges from time to time might alter them, abrogate them, amend them, supplement them, as experience in the administration of justice should dictate. Now, I undertake to say that is not only the way to deal with procedure, but it is the way to deal with the details of organization. You have got to prescribe something to begin with. If you do not prescribe it, you invite the legislature to go on indefinitely in this process of laying down details today, and more details tomorrow, and abrogating them today and adding to them tomorrow, and you get an apparent flexibility, with a real rigidity; because the things that ought to be changed are not the things that are changed. The things that are changed are things in which some particular member has a particular interest, or someone has an interest who has access to some pushing member, and the other things that ought to be changed are adverted to in meetings of the bar association, but legislation on the subject is never effected. If you want real flexibility you have got to depend upon the men who are responsible for the administration of justice, who know from their experience in the administration of justice what the difficulties are, and are in a position to interpret their own solution. That is more than half the trouble. The legislature enacts a statute as a procedure. How much do you know about it until two or three years have elapsed after it has been enacted? The construing power is a different power from the enacting power. That is the difficulty with most of our codes of procedure and practice acts in this country. There is nobody knows what they mean until there has been a long process of construction. If the judges who make those rules also administer them, and the construction develops through and along with and as a part of the application, and if the construction shows that there is a casus omissus or an unfortunate rule, it is changed when changes are

needed, not for the past, of course, but for the future, by the very agency that made it. And that gets rid of another difficulty that runs through all this subject since they made the mistake in New York in the '40's of committing all these details to legislation, and that is a certain liability to a lack of accord between the ends and aims and purposes of the rule-making and rule-construing and rule-applying authority, that is almost certain to develop. In the place where there ought to be sympathy and understanding, there is very apt to be a divergence of aims and methods and a lack of sympathy. Our practice acts everywhere have suffered from that. So I would say to you that in my judgment this scheme, this project of enacting a general outline, fixing a certain number of important details, subject to be changed by the organism itself, as the thing develops, and as experience shows how and where it should be changed, is on the whole the best plan that can be devised. If you turn organization over entirely to the legislature, and go to the legislature then with this project in the form of a bill, I should fear that some well meaning man might come to the next legislature with some project of details, and if he were a man of influence you cannot be sure what you might have happen. You might have happen exactly what has happened in New York with their code, where session after session someone has come forward with projects until you get a condition nothing short of chaos. One wants to fix details and one wants to leave them out. One wants to tinker this one without fixing that one, and it gets presently into a situation almost identical with what you have today. We need to wean the legislatures from the idea that it is their duty, or even their privilege, to be eternally tinkering with the details of the judicial system, and practice and procedure as a part of it. Those are matters that ought to be committed to the courts. England's and Canada's experience has shown that abundantly, if our own legal sense did not tell us so.

Then that brings me to another suggestion. One matter we are going to have to take account of more and more in the development of the law in this country, is a certain need of stabilization. More and more there are going to develop certain special types of litigation, that call for the mastery of the specialist in administering justice. The old fashioned method of doing

that was to set up a specialized court, but nothing worse could be devised. In this country when we have set up a new system of land transfer, we at once set up a land court, and you get a curious situation, where you have presently one set of precedents in your land court, dealing with titles under the Torrens Act, and another set of ordinary principles of the law, dealing, we will say, with ejectments in the ordinary courts, where you are not operating under the Torrens Act. In other words, those specialized courts, while there goes along a certain advantage of specialization, carry all the disadvantages of the decentralization that is at the bottom of many of our difficulties in the administration of justice in this country. We do not want specialized courts. What we want is an opportunity for the specialized judge to function as a specialist so far as the judicial business of the commonwealth requires such a specialist. Now, if you have such an organization as this project in my judgment permits, the administrative head of the judicial system in localities where there is a special type of business that demands a specialist, can keep that specialist there just as long as there is special work for him to do, and when there is not enough of that kind of work for him to do, can put him where other work is required. I remember hearing one of the justices of the English High Court of Justice tell this story in my hearing. He was sitting on divorce and matrimonial causes, and he had one cause set down for hearing which it was expected would take at least a week, and all the other business on his calendar had been put off. Time had been assigned for it a week hence. Through the death of one of the persons concerned in the case it had to go over after a few hours. The judge found himself with nothing to do for a week. Presently he got a note from the head of the judicial system: "I understand that you have nothing on your docket for a week. The following causes have been assigned to you from the congested docket of some one else." Now, if he had been a specialized court, business would have stopped for a week, but being a specialized judge he could deal with his specialty when his specialty needed to be dealt with, and when there was a hiatus for the time being, the judicial power of the kingdom could be put somewhere else where it was needed. I say then that one of the great advantages of a scheme of this



sort in my judgment is that it permits the development of specialized judges, because in the larger cities of the country it has proved to be a most serious abuse, that left to themselves, to order their work among themselves as they choose, judges immediately fall into an unfortunate system of rather rapid rotation. A judge is anxious to see all the members of the bar and all the citizens in the community that he can come in contact with. So he will sit one month in equity, and one month with a jury at law, and one month in the criminal tribunal, and so on around. For example, lawyers in New York City have told me that they have in greater New York a judge who is easily one of the greatest criminal trial judges that has ever developed in the country, and for criminal trials cannot be approached, but is not a very good judge in equity cases, and is as certainly reversed in equity as he is uniformly sustained in a criminal trial. But the practice has grown up for him to rotate. He sits a certain time in criminal cases, where no one could do better, and then moves on to equity cases, where the bar try to get continuances and postponements and find difficulty in coming to trial until his tenure of that court has gone by. Such a thing as that ought not to be left to judges themselves to arrange by some convenient system of rotation. That ought to be attended to by some one who is responsible for utilizing the judicial power of the commonwealth to its full extent and to the utmost advantage; and such a system as this permits that in exactly the way it ought to be permitted, by allowing it to be adjusted to experience of what proves to be best and what not.

It is a mistake to lay down the details of territorial districts by statute. What does that presuppose? The presupposition of a hard and fast system of districts is that the map with respect to population and volume of litigation will remain what it is now. We take the population of the state and the volume of litigation of the state, and we divide the map up; but who can say that day after tomorrow the situation will be what it is now, and yet those divisions will stand fast forever. It ought to be possible to adjust them to experience of the demands of business, and that can only be done by those whose every day experience tells them where the difficulties lie.

Then that brings me particularly to the suggestion which has

been made of supreme judicial districts, as it were. We do not need to talk about that *a priori* because one great commonwealth of the country is smarting under that system. I think Mr. Dillard will bear me out when I say that the bar of Illinois would give a great deal to be delivered from a system whereby the city of Chicago, which has, I suppose, half the population and more than half the legal business of the commonwealth, can never, with its magnificent bar, have but one judge on the supreme court, and the southern part of the state, large in geographical area, but not so large in population, and not at all large in its volume of judicial business, will always have a preponderance in the membership of that court. In other words, those judges represent soil, but it is not soil we want represented on the court. (Applause.) And when you organize a court on the basis of soil, you are simply reverting to the middle ages. The middle ages organized everything on the basis of soil, and let us hope that we have got beyond that in the twentieth century.

Then that brings me to another matter that seems to me important. You cannot entirely divorce judicial organization from procedure. Judicial organization, procedure, the organization, training and professional feeling of the bar, are the three great items in a program of betterment of our legal institutions. They are closely connected, but procedure and organization of courts are very closely connected, because if you have a properly organized judicial system, you have got the true agency for bringing about a real and a lasting procedural reform. I do not think anything has been more unfortunate in the legal history of this country than the notion that procedure, of all things on earth, must be regulated in all its details by statute, while the substance of law, which is the thing that ought to be certain, has to grow by a slow process of judicial application—of experience in the decision of causes. Now, where is it that the flexibility ought to be? It is in procedure. Where is it that the certainty ought to be? It is in the substantive law. And yet our general tendency has been to go exactly the other way. Why is that? It is because before the development of substantive law the only check we had on the magistrate, the only check we had on the personality of the judge, was procedure. Substantive law had not developed. If you could not hold the judge's per-

sonality down by procedural rules, he was turned loose. If you were in a court just after the Revolution, like the superior court of New Hampshire, with one doctor of divinity, one doctor of medicine, and one undègree doctor of agriculture sitting upon the bench, the only thing that you could do to hold them down to some degree, was to impose the details of a hard and fast practice upon them. But with the development of courts manned by lawyers, who know the substantive law, with the development of a complex body of substantive law, there is where you get your check. The decisions of the courts must accord with the substantive law, must give effect to it; and the bar can see whether the decisions give effect to it or not. You do not need then all that mass of hard and fast procedure, which grew up at an earlier period in our history as the only check upon the bench.

Then one of the things we need today is to get away from this legislative regulation of details of procedure, and the only way we can do it is by developing an efficient organ for dealing with procedure. Such an organ you have in such courts as are proposed in the draft of this committee. You have in the district court all the machinery for dealing with the details that must immediately be decided by what we still think of as rules of court, and in your supreme court, representing the whole state, manned by judges who sit from time to time in the district court, you will have a body of men who on the one hand will have sat at nisi prius and seen those problems, and on the other hand will have reviewed the decisions of the judges at nisi prius, and seen the other side of them there, and will know how to devise rules which can give effect to the substantive law, as a legislator never can.

Now, let us not deceive ourselves. The legislature does not make these rules that come out with the words "Be it enacted," in front of them. Who does make them? They are made always by some single individual who gets them set before the legislature, and in one way or another induces their passage. Never do they represent the real consensus of opinion among those who are qualified to pass upon a situation of that sort. Hardly ever do they represent experience. They represent some person's individual grievance, or some person's notion that he would like

to be connected with a reform of some sort. They do not represent what alone should be represented in a practice act, experience in the actual administration of justice. The pride of our law is that we do not write a code in advance to tell everybody a priori what he shall do, but we apply experience on the basis of common law principles, adjusting the relations of individuals with each other. Isn't that exactly what we should do in procedure, and how can we do that except by committing procedure to that department of our government which alone is able intelligently to deal with it? And mark this: Procedure is not a matter which really ever ought to have been committed to legislatures at all. It had always been regulated by the courts at common law. The courts by their general rules, some of which in the English books prior to the Judicature Act ran back to the reign of Richard II, had always done that, and it is a most unfortunate perversion that following 1846, in this country we created the habit of legislative tinkering with these details. It is as if Congress should regulate the procedure of the executive department, by saying that every time the President had a meeting of his cabinet he should commit to writing in advance a detailed schedule of the subjects to be considered, and should furnish each member of his cabinet so many days before with his detailed schedule, and that the discussion should be taken down and should be conducted in a certain order. Nobody would stand for such a regulation of the details of executive procedure. And yet the legislative regulation of the details of judicial procedure is exactly the same sort of thing, and really just as pernicious.

Then just one thing more. One of the very best provisions in this project, it seems to me, is the provision whereby the justices of the supreme court are to sit from time to time in the district courts. That touches one of the gravest evils in our American judicial organization, which is the wide distinction which we have been drawing between *nisi prius* administration of justice, and the administration of justice in the court of review. I am satisfied a study of our American Reports will show that not the least of the abuses in the administration of justice has been the very academic attitude of the court of review, towards the proceedings in a trial court. Why? Because in the court of

review the matter comes up more or less divorced from the setting which is the life of it in the lower court. It gets an abstract character in the court of review. The judges of the court of review more and more think in terms purely of abstract propositions, but the application of the abstract proposition is the very life of it. You have got to clothe those abstractions with the flesh and blood of a concrete case to make them mean anything in the administration of justice. The only cure for that that I can see is to bring the judges who review the decisions of the courts of first instance into the courts of first instance from time to time to pass them through there, to give them by actual experience a living realization of the problems and difficulties of a court of first instance, and then these abstractions will not be divorced in their minds from the living realities of a controverted litigation. The English have been very careful about that. They utilize their judges continually in the work of the courts of first instance. They have even been known to send the Lords Justices of Appeal out to circuit. The Chief Justice sits habitually at nisi prius. The Lord Chancellor goes every once in awhile into the Court of Appeals to hear appeals in chancery, and has been known to sit at first instance in chancery. They try carefully to keep the connection between the work of reviewing others decisions and the work of writing decisions in the first instance. I do not believe anything could be devised that would be more effective in keeping a judicial system alive, to make it respond to its task, than the plan which is here proposed. I think we must regard it as a misfortune that the press of business, the exigencies of judicial administration in the Federal courts, have put an end to the old practice of the justices of the supreme court sitting from time to time in first instance. They do sometimes now sit in the Circuit Court of Appeals, although rarely; but they no longer sit, as you know, at first instance. I cannot feel but that in the end that is going to prove a misfortune. What I am sure of is that it has been a misfortune in our judicial administration in this country that our strongest men, presumably, upon the bench have been utterly divorced from immediate contact with litigation.

Now, just one more thing in that connection, and I must stop. It sometimes happens that there are cases tried at first instance,

in which it is of the utmost importance that the whole community should have confidence that the very best talent that the commonwealth affords is being applied—that the brand of justice to be meted out there is the very best of which the commonwealth is capable. What do we do in this country, when, for instance, there is such a case as the murder of President Garfield, the assassination of President McKinley, or the anarchist trial in Chicago, when the eyes of the nation are focused upon the trial? Why, the judge who, by the accident of rotation, for the time being happens to be upon the bench struggles as well as he can against an array of the ablest counsel that the country can produce. The cause is then reviewed by a reviewing tribunal, and if any slip should have occurred, the country would be humiliated by the reversal of the judgment; and yet, if that slip did occur, it would be infinitely more humiliating that the fear of excitement popular indignation should preclude the court from reversing that judgment. Now, we are open to that difficulty continually in this country. You can see case after case in the annals of our state trials presenting that very situation. It was the fear of something of that kind, I suppose, that led to a military commission passing upon the murders of President Lincoln. The authorities were not willing to trust the local courts under the circumstances.

The way to meet that is by just a judicial organization as has been here suggested. They met it in that way in England in the trial of Sir Roger Casement, when the Lord Chief Justice presided. In the Crippen case the Lord Chief Justice of England presided. They meet it that way in England. Whenever there is some case of that kind, which attracts popular attention, when it is necessary that the very best talent of the commonwealth be employed, the judicial machinery is such that that talent is put to work where it ought to be.

And let me remind you that it is not only important that justice be done, but it is equally important that the public should feel that justice has been done. You have got to consider appearance of that sort, because the confidence of the public in the administration of justice is the very life of it.

I say then again, everything considered, it seems to me that you have here before you an admirable project, and I should

feel, if you were successful in your efforts to put that upon the law books of the state, that you could congratulate yourselves on paving the way for the best judicial organization in this country, and an organization that would compare well with organizations anywhere. (Applause.)

MR. MARTIN: In order to make certain what we are debating on in this thirty minute debate that we are to have now, I move that we lay upon the table the substitutes that have been offered providing for committees to further consider this matter and proceed to the consideration of Mr. Dabney's paper or report. I move that these substitutes, the one offered by Mr. McClendon and the one offered by Judge Hawkins, be both laid upon the table.

(The motion was duly seconded.)

THE PRESIDENT: Did Judge Hawkins' substitute receive a second? I am of the impression it did not. There is but one substitute before the house. You have heard the motion to lay the substitute of Mr. McClendon upon the table. It is not debatable.

The question was put and the substitute was laid upon the table, with no dissenting votes.

THE PRESIDENT: The substitute is on the table, and the original motion to adopt the report of Mr. Dabney is before the house. As the matter of the thirty minute debate is left with the Chair, if there are opponents to that motion I would like for Mr. Dabney to arrange to take fifteen minutes to close the debate, and any opponent to the motion to have the other fifteen minutes.

JUDGE DUNCAN: There is just one suggestion I want to make with reference to Mr. Dabney's motion about the appointment of a committee.

THE PRESIDENT: That is not before the house now.

JUDGE DUNCAN: I want to suggest this. The provision is made to send a committee to Austin to press this matter before the Legislature. I think that there ought to be a provision made to pay the expenses of that committee while they are there.

THE PRESIDENT: There is no motion before the house to appoint a committee. That was in the substitute.

MR. DABNEY: I stated I would offer such a motion.

THE PRESIDENT: If there is any one here in opposition, having the negative, we will hear from him.

JUDGE WEAR: Judge Hawkins has specially requested to be permitted to make some remarks:

THE PRESIDENT: I am sure this house would be glad to hear from Judge Hawkins.

JUDGE HAWKINS: Mr. President and Gentlemen of the Association: I had about abandoned any thought of making any further remarks on the subject, and would not have done so but for the kind suggestion of Judge Wear, and I regret now that I am not prepared to give the matter the review to which it is entitled. But I did not come here to talk to you. I came to enjoy the social features of the occasion and renew my acquaintance with my brethren. So, not having had remarks of this kind in contemplation, except tentatively for a few minutes this morning, I shall have to ask you to be a little indulgent, if I am not as concise in the few minutes on the subject as I might be, if I had given the matter more attention.

We are confronted with a very difficult question here. It is a very serious and important matter to change your judicial system. I was a practicing lawyer at the Texas Bar for twenty-five years before I became a member of the Supreme Court. I have been a member of that tribunal now a little more than five years. During all of those thirty years I have tried to give such attention as I could to this subject. I have made careful study of it, as opportunity offered. I have been a subscriber to and a reader of, as far as time permitted, the publications mentioned by my friend Dr. Potts, of the American Judicature Society. In fact, I have the honor of being a member of the advisory council of that organization.

There is no question but there is need of change. I realized as a member of the bar, and I realize still more, as a member of the court now, the pressing need for change. I do not suppose there is any practitioner at the bar who has any keener sympathy with the necessities of the situation than I have, and



it has been accentuated instead of lessened by my term of service as a member of the court. I say that so that you may understand that I view this from your standpoint plus my own experience there. However, I think that many of our troubles are unduly magnified. I do not think it is as bad as Brother Dabney painted it in his remarks this morning. It is bad enough. It needs material change in many respects. But we find after all efficient fundamentals. It is more a matter of application. It is a matter of adjustment of the machinery, with certain changes, than it is of complete revolution. Now, in saying that, I am not unmindful of the fact that there is great merit in the growing idea of a judicial tribunal on the general plans outlined here by Dr. Pound and by Brother Dabney. There is in my judgment a very great need for the adoption of a great many of those ideas. There is unquestionably a great need for simplicity in practice and procedure, and I think if you gentlemen will look over the reports of the Supreme Court for the last few years, you will find that that court almost invariably has set its face like flint against technicalities, and in favor of a practical application of common sense construction, which will result in the enforcement of actual and practical justice, rather than in technical refinements and distinctions, too often subversive of justice. The difficulty is in drawing the line. The difficulty is in striking the happy medium between the plan of leaving the entire judicial system, or almost all of it, to the Legislature, as suggested by my friend and classmate, Mr. Moseley, and these other plans which go to extremes, perhaps, in the other direction, and from which we are suffering now to some extent under our present judiciary article.

I frankly concede and here render full thanks to Mr. Dabney for many excellent ideas set out in his paper. As I intimated this morning, I think many of them ought to be carried into effect. Among them I will mention some which occur to my mind, just so you may see the trend of my thought on the subject, and as a preface to some other things which I hope so say briefly. For instance, I think it would be a good idea to call our justices of the peace "magistrates," to abolish terms of court, at least in the trial court, to have the rule day substituted, to have the great majority of the rules of practice defined by the Supreme Court instead of by the Legislature, with the qualifica-

tions that some of the fundamental principles I would still leave in the statute. I think perhaps there is great merit in the suggestion of having enlarged judicial districts, with a number of judges selected in the district, to serve promiscuously under a proper system throughout the district, so as to remove this element of immediate association, and relationship, and kinship and neighborliness, and all that sort of thing, to which reference has been made. I think that would tend to promote the administration of justice, though I do not believe that a very large latitude ought to be given to the judges themselves in working out and adjusting the administration of the system. There ought to be some general rules prescribed, either by the Legislature or by the court of last resort, which at least in a general way would work out those problems, and take it out of the determination of those district judges themselves. And certainly those rules ought to be made so plain and so clear that there would not be a clash of jurisdiction and conflicts among those district judges in the administration of the law. Certainly the probate judge and the county judge, which we have now, under Brother Dabney's system, ought to be a lawyer, and so on. What I take to be the great underlying principles in the Dabney bill and report, and what I take to be the great underlying principles in the minds of you gentlemen, which you want to approve evidently, is one which I heartily approve, though I disagree with him in some expressions of that idea, and that is that we ought to try to modernize our judicial system, to give to the Chief Justice of this State large administrative powers, to utilize the entire manpower of our courts, to make it as flexible as we can without a sacrifice of the fundamental principles of constitutional government, segregating the different powers of government, and placing the organization of the principal courts in concrete form in the Constitution, instead of leaving it to the caprice and whim of the Legislature. So in that general way, and with that definition of what has been termed the principle underlying this bill, though in many respects not in accord with the expressions of that principle, I agree to the general idea, and the more I have studied it the more I have become convinced that that principle ought to be carried into effect in our judicial system.

I think this is true, that we cannot afford in Texas to adopt

the provisions of the Constitution of the United States and simply say that there shall be a Supreme Court and such other courts as the Legislature may from time to time prescribe. I think that gives too much latitude. I think that we ought to name the principal courts, and then say "such other courts as the Legislature may prescribe." I think we ought to define the general fundamental features of jurisdiction, leaving a considerable margin of latitude and flexibility for the Legislature to exercise, somewhat on the line of the provisions of the present Constitution about the jurisdiction of the Supreme Court, that it shall be thus and so until otherwise provided by law.

So with those general remarks I want to call attention to one or two features of this bill, which seem to me to be very dangerous to our judicial system. In the first place, my experience and my observation have taught me that for a State like this, with all its great variety of interests and law questions coming up, an intermediate appellate court is a practical necessity. It is substantially the Federal system. It is a system which has been adopted in many popular States, as mentioned by Dr. Pound yesterday morning, and in some he did not mention, and it works well in those States. And if you would lay aside the experience of other States, and view it at first hand, take it up in Texas, I call your attention to this fact, and I challenge your attention—I want you to remember this, if you do not remember anything else—fifteen men cannot do in Texas the work that thirty-three men are trying to do on the appellate courts of this State. It won't be even that, because one-twelfth of the time of each of these fifteen men, under this provision, will be in the trial court, consumed in the trial court; so you have about fourteen men, really, representing the work in time of fourteen men. Now, gentlemen, fourteen men cannot do the work that the twenty-seven members of the Courts of Civil Appeals and the three members of the Court of Criminal Appeals and the three members of the Supreme Court are doing, or trying to do, now. Furthermore, if they attempt it, we will have "confusion worse confounded." We will be farther behind than we have ever been. It will be the most disastrous judicial system that Texas ever knew.

The work of the Supreme Court ought to be confined largely and almost entirely to questions of law, to the settlement of the

more difficult questions of substantive law. Now, necessarily, if their time is taken up, as it will be to a very great extent in the ramifications of these records, in reviewing the facts, in determining whether the findings of the trial courts shall be affirmed on the facts in a statement of the case, in working out the decisions on either side, and laying down in an opinion what they determine is the correct rule of law, then they won't have the time to devote to the questions of law which they will have under the intermediate system, because now under the present system the Courts of Civil Appeals do that work. It is a vast clearing house for the Supreme Court, and questions of law are presented to the Supreme Court, and it has its hands full trying to take care of them, and more than it can do under present conditions. If you leave all that work for the Supreme Court to do, it will be everlastingly swamped, and you will be in worse trouble than you have ever been in your lives. On that subject I want to say that a vast misconception exists with reference to the work of the Courts of Civil Appeals. I know how I felt about it when I was a practitioner, and I know what is in the mind of a great majority of the lawyers of the State. Here and there you will find criticism, and on certain features you will find general criticism about the result of that work, but I want to quote the record to you. In eighty per cent of all cases appealed from the decisions of the Courts of Civil Appeals in Texas, for one year, two years, five years, and as far back as I have traced the record, the application for writ of error has been refused peremptorily by the Supreme Court, upon the finding that there is no substantial error in the case, that the judgment reflects the law of the case substantially, and even of the twenty per cent in which the writ has been granted, a considerable number have been affirmed on final hearing, on argument, or on submission, and final decision by the Supreme Court, so that a considerable number, more than eighty per cent of all decisions of the Courts of Civil Appeals from which appeals are taken, are found by the Supreme Court to be correct essentially, at least, so far as the decisions of the questions of law are concerned.

There is a vast complaint about conflicts in those decisions. I want to ask you to take the books and see how many applications for writs of error have been granted and how many decisions have been rendered representing conflicts in this State.

Now assuming for the sake of argument that the decision of the Supreme Court is right, and that is what you gentlemen have as the standard, now, measuring it by that severe standard, there are very few decisions of the Courts of Civil Appeals that are in actual conflict. There may be some expression that in a general way conflicts with another expression in a general way, but taking the word "conflict" in the meaning in which the statute uses it, as interpreted by the Supreme Court, as a decision wherein one holding would overrule the other in that particular case, they are extremely rare. And again there are not very many instances of dissent. So the system has worked pretty well, except that we have gotten behind.

Now, just a few words with reference to that, and I will be brief on that. My own judgment is that the great problem is to try to find a method of expressing in the Constitution the essential things regarding the organization of the courts and the principal jurisdiction of the courts, and then leave for the Legislature, or for the Supreme Court, as may be determined, the completion of the scheme in the form of an announcement of rules of practice. This bill does not recognize that principle according to my understanding of it. Take, for instance, the very question of how many men shall constitute the Supreme Court. It leaves the same wide open. It says that until otherwise provided by law it shall consist of fifteen men. There ought not to be any "otherwise provided by law" which is wide open like that, in a constitutional provision concerning the court of last resort in Texas. Now, you may say it will be difficult to limit. Let me make you this suggestion: Suppose we say that there shall be one Supreme Court, consisting of a Chief Justice, and of four, six, or eight Associate Justices as may be prescribed by law, provided that the Legislature shall not reduce the number. We would start out with five. If the Legislature wants to increase it, they can make it seven. If they want to still further increase it, they can make it nine, but it furnishes safeguards, it furnishes protection, in this: In the first place, there is an admonition to the Legislature not to put on too many men, with the expectation that they can take them off after a while, if they are not needed, because that might induce them to put men on too fast, to build up a court of too great a number of men, more than are needed, and at the same time it carries a

more important safeguard. That is, that it prohibits the Legislature from legislating men out of office in that position, because they do not happen to like a man's decision in a particular case, or because he holds unconstitutional some bill that is enacted by the Legislature. In that way you preserve an essential element in American government, by maintaining the integrity and the absolute independence of the courts and the judiciary. Too much stress cannot be laid upon that feature.

You might take this bill on down the line, and while you say that you agree with many of the fundamental ideas, there can be methods of expression, there can be a weeding out here and there, there can be a rephrasing of the idea, so that you will preserve these essentials with regard to organization, and with regard to jurisdiction, and yet will have a flexible system, which will take out the slack and relieve us of this lost motion. Now there are many suggestions in a practical way, that would take up too much time. There is one other feature here to which I want to call your attention. Well, I won't go into that, the thought that I had in mind, which no gentleman seems to think of enough importance to justify him in seconding my substitute, that all of these matters could be thrashed out better in the committee. Now, that is for you gentlemen. This is your business. If you want to submit this as it stands in a general way to the Legislature, all I can do is to put up a danger signal. It won't do. It will bring you trouble. We must hold to the system of intermediate courts, and there are many ways in which that can be adjusted. As I have said, I have taken the pains to work it out on paper. Whether it would meet your approval I do not know. I have not the time and it would not be profitable to attempt to present it here, but I say to you that we can save the essential elements of our jurisprudence, which have been of tested benefit and of tried and proved value, and at the same time take out this slack, and at the same time provide for getting up with our dockets. When you thrash it out you will find the great bulk of the work will have to be done in the trial court. There is the place to correct this trouble very largely. If we will get a proper adjustment of our organic system, with a definition in the Constitution of the principal jurisdiction, with flexibility left to the Legislature to adjust it to the needs of the people, and then by proper rules of prac-

tice and procedure, made either by the Legislature on the request of this Association, or by the Supreme Court with the co-operation of this Association, so as to make your practice and procedure just as absolutely simple as possible, to reduce the difficulty and the technicalities of appeal, as far as it can be reasonably done, to reduce the cost and expense of appeals, and make your practice and procedure as absolutely practical and simple and efficacious as the human mind can do it, then we will have the judicial system that we ought to have, but this does not do it. I thank you. (Applause.)

THE PRESIDENT: Gentlemen, there are ten minutes left in which to close this debate.

MR. MARTIN: Mr. Chairman: I want to make just a few remarks. I think that Mr. Dabney has placed this Association in his debt very much by the preparation and the submission of this carefully prepared report. I well remember down at Houston, a year ago, the circumstances under which this committee was appointed. I believe, by the way, that I was the mover of the motion under which this committee was appointed in our last Bar Association. A report had been made and adopted by the Bar Association by an overwhelming majority, made by Judge Harris, of Galveston, which did away with the Courts of Civil Appeals, provided for some thirty or forty judges of the Supreme Court, this Supreme Court to sit in divisions, and for appeals or causes to be reviewed by writ of error before this big Supreme Court. By an overwhelming majority of the Bar Association there present this report was adopted. Then the next day, upon consideration of the fact that the Bar Association of Texas would have one more regular annual meeting before the next Legislature, and in view of that fact, it was thought best to reconsider the vote by which this report was adopted, and placed Mr. Harris' report along with all other plans in the hands of a special committee. With the exception of Judge Garwood and Mr. Dabney, it seems that none of that special committee have favored us with any kind of a report. Judge Garwood says that he approves absolutely the report made by Mr. Dabney. He doubts the wisdom, however, of pressing it at this particular time, doubts whether or not we will be able to put it in force, able to carry it at an election as a constitutional amendment, and for that reason he recommends

that we do some more patch work. Now, I believe that now—right now—is the time of all times for us to secure the passage of this constitutional amendment, if we are ever to secure such an amendment. I agree with the gentleman who this morning advanced the idea that early in the next year two constitutional amendments would be submitted to the people of the State of Texas, two that I believe will be very popular indeed, and I believe it will be a most propitious time for the bar of Texas to slip in this constitutional amendment also. I believe furthermore that the citizenship of the State of Texas is ready and willing and anxious to vote for any measure that will bring about judicial reform, and will hasten the footsteps of justice in this State. Any measure that promises such a thing to the citizenship of the State of Texas will be a popular measure. Judge Hawkins advances an idea here that has considerable force in it; that is, that we are going to find that this court will not be able to do all of the work that is now being done by the Courts of Civil Appeals. I believe that with the shortened machinery that is provided here for the presentation of writs of error, and the carrying of all cases to the Supreme Court upon writs of error, and the direction of that court to send up only such parts of the record as may be necessary for their consideration in the determination of the merits of the points raised—with these changes I believe that cases will be very much shortened, and that the courts can transact much more business than they are doing now.

MR. DABNEY: Pardon me, but I would like for you to call attention to the fact that the Supreme Court can call in any number of district judges at any time.

MR. MARTIN: Yes, sir; I was going to call attention to that. I call your attention to the further fact that at any time it may be necessary, they may call in any of the district judges of the State to assist them in passing upon these writs of error; also to the fact that at any time the Legislature may be called upon, upon the recommendation of the Supreme Court, to establish more judges, and, gentlemen, I do honestly believe that even if it requires thirty-three judges of the Supreme Court to transact the business—



JUDGE HAWKINS: The statement has been made several times that the Legislature is to have control of the matter of additional judges. As I read this statement here, paragraph 7 on page 20, the Legislature has nothing on earth to do with it, and it is to be left exclusively to the Supreme Court.

MR. MARTIN: I get it from paragraph 3: "The Supreme Court shall consist of a Chief Justice and not less than fourteen Associate Justices, until otherwise provided by law."

JUDGE HAWKINS: I thought you were referring to district judges.

MR. MARTIN: No, sir; I was referring to the Supreme Court, and answering your argument that a Supreme Court of fourteen judges could not do the business now done by thirty-three judges in the Courts of Civil Appeals.

JUDGE HAWKINS: I beg your pardon. I thought you had passed beyond that.

MR. MARTIN: At any time the membership can be increased, and at any time they can call in the district judiciary, and, I believe, gentlemen, that we are going to find, as was stated here by our distinguished guest, that if this is adopted we will have in Texas the best judicial system in the United States of America. (Applause.) I, therefore, favor its adoption just as it is, subject, of course, to being embellished by a committee appointed for that purpose, which I understand will be provided for hereafter.

MR. RODGERS: Is it provided that the motion for new trial shall be passed upon by more than the trial judge?

MR. DABNEY: I have prepared a motion which I am going to offer if the gentlemen should pass this in principle, that this should be presented to the committee, and that that committee be authorized to make changes not in conflict with the principles of this resolution, and suggesting the change not only with regard to probate judges, but also as to whether motions for new trials shall be passed on by three judges, when practicable. That motion I will offer if this resolution should be adopted in principle.

MR. RODGERS: As to the matter of the probate judges—

MR. DABNEY: I have your suggestion, and that will be cared for.

MR. SANFORD: Are there a few moments left? I do not want to make a speech.

THE PRESIDENT: We will take them.

MR. SANFORD: I am not going to make an argument nor a speech, but I do want to urge the necessity for action now. For about twenty years I have been attending the annual meetings of this Association. I think that with one exception only I have attended all the meetings during that time. At each one of these meetings this subject has been under discussion—under serious discussion. The lawyers of the State are now being charged by the people generally with negligence in this matter. We are really receiving at the hands of the people very great criticism.

JUDGE DUNCAN: And at the hands of the press, too.

MR. SANFORD: Yes, sir; and the press as a rule simply speaks for the people. I believe it is time for us to act now. I am in favor of pressing the matter with all possible speed, and I want to insist that it shall be understood, when the committee is appointed, if our motion carries for the adoption of this report, which I feel sure it will, that when this committee is appointed it will begin its work immediately, to the end that the lawyers throughout the State, in every section, may be enlisted in this work; that is, enlisted in the work of educating the people of their respective communities, as to the real, genuine merits of this proposition. We can have no hope to carry it through finally unless that is done. That is a necessity and I believe that should be the first work of this committee. I endorse absolutely and unequivocally Mr. Dabney's proposition. It has put in concrete form ideas that I have had in my mind unformed, except in a general way, for a number of years. I believe that it creates a machinery that not only is a beautiful theory, but will be a practical working machine. With respect to the point that has been raised first by Mr. Wright and then by Mr. Rodgers, as to motions for new trials, I spoke to Dr. Pound about

that matter when Mr. Wright first mentioned it. He said: "If you will stop to think just a moment, that is a matter that should be regulated and controlled by the rules promulgated by the Supreme Court, rather than to attempt to deal with that detail in the constitutional provisions." I think that Dr. Pound's suggestion is exceedingly wise.

THE PRESIDENT: The motion is before you. The motion is to adopt Mr. Dabney's report, and with it the bill as outlined by him, the resolution proposing a constitutional amendment.

The question being put, the Chair declared that the ayes had it and that the motion was adopted.

MR. CECIL H. SMITH: With reference to the jurisdiction of the Supreme Court, I desire to offer a resolution. The resolution is: "Resolved, that we favor the repeal of the act of the Legislature of March 15, 1917, which adopts an amendment for Section 6, Article 1531, Revised Statutes, defining or purporting to define the jurisdiction of the Supreme Court. The exact meaning of said amendment is so vague and uncertain that no lawyer is able to say with certainty what it does mean. In lieu of said amendment we favor the adoption of the following, which is substantially the provision of 1913:

"6. Those cases in which by proper application for writ of error it is made to appear that a Court of Civil Appeals has erroneously declared the substantive law of the case, in which case the Supreme Court shall take jurisdiction, for the purpose of correcting such error.'"

Mr. Chairman, I move the adoption of that resolution.

MR. DABNEY: I second the motion.

JUDGE HAWKINS: May I ask a question? You are proposing to repeal the entire act of March, 1916, as I get the reading of it.

MR. SMITH: No; the act of 1917, as I understand it.

JUDGE HAWKINS: If that is adopted and the Legislature carries out your request they will repeal the entire act, which was one containing six subdivisions relating to the jurisdictions, and not merely one subdivision six.

MR. WARD: I believe Judge Hawkins is right about that. It should be the repeal of paragraph 6.

MR. SMITH: Of course, that is what I expect to do. I thought I had it sufficiently clear. I can reframe it and add "in so far as it adopts Section 6."

MR. WARD: The way you have got it framed, the repeal of that section would not of its own force reinstate the previous law, and if you repeal that you have got no law at all. What you are driving at is simply to amend Section 6 of the act of 1917.

MR. SMITH: The resolution seeks to repeal the act in so far as it adopts subdivision six.

MR. WARD: Why not just amend Section 6, and leave the law standing as it is now?

MR. SMITH: My recollection of the act of 1917 is that it simply amends subdivision 6 of Article 1531, but I may be in error.

JUDGE HAWKINS: No; it is a re-enactment of the whole article, which carries five subdivisions ahead of this one which you want to amend.

MR. SMITH: What is your objection to it as I have it? (Mr. Smith reads the resolution.) This is not a bill.

MR. KIMBROUGH: I would like to ask Mr. Smith if he would have any objection to leaving off the last words, "for the purpose of correcting such error"? I think when the Supreme Court takes jurisdiction of a case it ought to have jurisdiction, and not limit its jurisdiction to the correction of that particular error.

MR. SMITH: I would have no objection to it in the world, except that I thought we had agreed on a scheme of judicial procedure, etc., and that this old provision had been construed by the court, and we would follow the language as near as possible, the idea being that it was perhaps temporary.

MR. KIMBROUGH: Well, I will not insist.

The question being put, the resolution as originally read by Mr. Smith was unanimously adopted.

MR. DABNEY: In connection with the promotion of the constitutional amendment, I offer this motion:

"Moved that the President of this Association appoint a committee of five members to present the resolution adopted in principle to the Legislature, at its next regular meeting, and who shall not be appointed unless they agree to support earnestly the resolution before the Legislature; that this committee be authorized to make all changes promoting the principles of the resolution adopted, and to determine whether probate judges shall be elected or appointed, or should always be lawyers; and also to provide that motions for new trials shall be passed on by three judges, when practicable. Further, that this committee, under the direction of the President, shall make such propaganda, and have such printing done at the expense of this Association, as under his direction shall be determined upon."

It seems to me that the provision with reference to new trials could best be left to the Supreme Court, but I told Mr. Wright that I would add that.

JUDGE WEAR: Individually, I think that provision is a good one, but I also think that the suggestion coming from Dr. Pound is a good one, that that should be left to the Supreme Court.

MR. DABNEY: I will strike that out, if Mr. Wright consents.

MR. WRIGHT: I do not think he has the right to strike that out now. It has been voted upon with the understanding that that was a part of this resolution. I do not want to disagree with our distinguished guest, but I do not think that even Dr. Pound disagrees with me in saying it will be a wise thing for three judges to pass upon these motions for a new trial. How, then, are we to get that order from the Supreme Court? The suggestion that I made was that upon application to the Chief Justice by the party making the motion he would assign two other judges to sit on the motion for new trial, and in view of the fact that it passed with that provision, I object to the proponent of the resolution saying he is going to strike it out now.

MR. DABNEY: I said I would not strike it out without your consent. It says "if practicable." That leaves the court to function that matter.

JUDGE DUNCAN: Now, with reference to the suggestion I

made a while ago, of course, it would be expected that the members of this committee would not charge any salary, or anything of that sort, but I think that the organization ought to make an appropriation or allowance to pay the actual expenses of the committee while they are down there in attendance upon the Legislature, and if Mr. Dabney would like to put that in, I would be glad to have him.

THE PRESIDENT: I will make this suggestion, that in the light of my experience with the finances of this Association, I do not think that this committee ought to be authorized to incur expense except with the consent of the Board of Directors, because our income about carries the ordinary expense, and I do not think a committee on a proposition of this kind ought to be turned loose. I do not mean that they would be careless about the matter, but not knowing how much they could afford to spend they might exceed a reasonable allowance.

MR. DABNEY: I will change that to read, that they shall have such printing done at the expense of the Association as the Board of Directors may authorize. I have not included any other expense. If the Association could bear it, it would be a good idea, of course.

MR. KIMBROUGH: I think it should include authority to incur the actual expenses of the committee while engaged in this work.

THE PRESIDENT: I think we had better leave that off, in my judgment.

MR. KIMBROUGH: Judge Garwood sets out in this report that it has been impossible to get committees upon this subject together. I want to say that it has been a great pleasure to me to see the unanimity with which this body has endorsed this report, but if the committees are widely scattered it might be a matter of importance to make some provision for their expense. Otherwise, the burden of putting this resolution through might fall very heavy upon the members of that committee. Unless we do get a good working committee, and unless the committee is appointed in such a way and under such circumstances that it can and will devote an immense amount of time and attention to this matter, it will be found after all that our efforts may come to naught. Having gone thus far, and having secured the

concurrence of the bar on this great measure, which I believe will, if we can incorporate it into our Constitution, give us a very great judicial system, we ought not to take any chance that we can avoid in raising a committee, a very strong committee, and clothing it with such circumstance as will encourage it to do its utmost to carry out the will of this Association, and will place it in such circumstances that it can go forward and press this work, so happily begun here today, to the great conclusion to which we all look forward in the submission of a constitutional amendment to be voted upon next summer, and the carrying of that constitutional amendment to success at the polls. I am not one of those who believe that this is an inauspicious time, but rather an auspicious time, for putting forward this great reform, and I believe we can submit it to the voters of the State of Texas with more confidence than some of my brethren are disposed to believe. But everything will depend upon getting it before the people in the right form and getting a right start, getting it to going and getting it to meeting with favor. Therefore, it will be a matter of great importance to have a suitable propaganda behind the movement, and so I think the raising of this committee and the placing of it in circumstances that will enable it to make an aggressive and a bold campaign for the adoption of the measure, not only before the Legislature but before the people, is a matter of the very utmost importance, and some means ought to be made to finance the movement and not put it down at the feet of a committee and expect that committee to bear the whole burden.

THE PRESIDENT: The resolution has been changed by consent around here and made to read now as follows:

“Moved, that the President of the Association appoint a committee of five members to present the resolution adopted in principle to the Legislature at its next regular meeting, who shall not be appointed unless they agree to support earnestly the resolution before the Legislature; that this committee be authorized to make all necessary changes not in conflict with the principles of the resolution adopted, and to determine whether probate judges shall be elected or appointed, and whether they shall always be lawyers; and also to provide that motions for new trials shall be passed on by three judges, when practicable. Further

ordered, that this committee, under the direction of the President, shall make such propaganda and have such printing done at the expense of the Association as the Board of Directors may authorize. Resolved further, that said committee may appoint a committee of three members of this Association from each Senatorial district of this State, to be known as district advisory committees, who shall have charge of the proper presentation to the people of such district of the resolution of this Association relating to judicial reform. Said committee shall confer and advise with the members of the Texas Legislature prior to its next meeting on the necessity of submitting a proper constitutional amendment, and shall use all proper means to present fully to the people the necessity of adopting the same."

This is the resolution that is before you. Are you ready for the question?

The question being put, the chair declared that the ayes had it, and the resolution was adopted.

MR. HARRISON: I want to make a motion which seems to me to be practicable and important in the matter just disposed of, and will preface it by these few remarks. I believe from my own experience that others would be profoundly influenced in favor of making the resolution in substance a part of the Constitution, if they could have the benefit of what I have heard. Therefore, I move that the directors be requested, as soon as may be, to ascertain the expense incident to having the resolution, the proceedings of this organization upon it, the address of Dr. Pound, and everything pertaining to it, printed in sufficient number that it can be placed as far as may be in the hands of all the lawyers in the State of Texas, and especially in the hands of every legislator, before the Legislature meets, if possible, and that if the treasury of this organization does not have sufficient funds, they request members of the organization and of the bar generally to contribute to make up a fund to print this, explaining in that request that each member will receive a pamphlet containing this resolution and the arguments for and against it. I profoundly believe that if lawyers bring their minds to bear upon this, with the light that is thrown upon it by the arguments that have been had here, they will be, like I was, convinced that it is the thing to do; for when I came



here, after having read it, I was profoundly of the opinion that it was so comprehensive, so complex and so cumbersome, that it would break down of its own weight. I am convinced now, profoundly convinced, that it is the thing to do, so much so that I would say, though such things are sometimes misunderstood, that I would cheerfully honor a draft for \$100.00 to help out in this amount of expense, if necessary. I make that as a motion. (Applause.)

MR. RODGERS: I second the motion.

THE PRESIDENT: We have made great progress, when a bunch of high class Democratic lawyers can convince a recalcitrant Republican, the only first-class one in the State, that we have done the right thing. (Laughter.)

MR. HARRISON: The trouble about that is that this is the first time democracy has ever approached republican ideals. (Laughter.)

THE PRESIDENT: You have heard the motion. I understand the offer of the draft is part of the motion. It is that the question of the propaganda will be handled by the special committee, but the directors will find out whether the Association can afford it, and if not, entirely or in part, will undertake to raise the money to pay for the spreading of this propaganda.

The motion was unanimously adopted.

MR. CARRIGAN: I move that all the members of this Association go on record by vote, pledging themselves to assist in putting this constitutional amendment through, both in the Legislature and after it shall be submitted before the people.

MR. SANFORD: I second Judge Carrigan's motion.

The motion was unanimously adopted by a rising vote.

MR. KIMBROUGH: I would like to call attention to the fact that it is a good time to impress that upon prospective members of the Legislature, who are running, before they get the nominations.

MR. McCLENDON: I present this resolution, which I do not think will require any debate. This resolution was handed to me by Mr. Royall R. Watkins, of Dallas, and bears his name. I move its adoption:

“WHEREAS, Congress has enacted a law known as the War Risk Insurance Law, the purpose of which, among other things, is to provide for insurance upon the lives of soldiers and sailors of the United States, and to provide for a reasonable compensation to be paid those wounded or injured in line of duty, and to rehabilitate and reconstruct such wounded or injured men and to bring them back to health, and to provide monthly allotments and allowances for the dependents of the soldiers and sailors under arms; and,

“WHEREAS, there has been created under the said act a Bureau of War Risk Insurance, through which this law is to be administered, and such bureau is to be under the supervision of the Secretary of the Treasury and his assistants; and,

“WHEREAS, a district branch of the said Bureau of War Risk Insurance, composed of Texas, Arkansas, and Oklahoma, has been created, with its principal office in Dallas, Texas, for the purpose of expediting the work of said bureau in this section of the country; and,

“WHEREAS, it will become necessary from time to time for this bureau to gather evidence concerning cases brought before it under this law:

“THEREFORE, Be It Resolved, by the Texas Bar Association, that it now tenders the services of its members to the Secretary of the Treasury, his assistants and all members of the Bureau of War Risk Insurance, in assisting them in all the work in connection with such investigations that may be necessary to help the fighting boys at the front, on the seas, and in the camps, as well as their dependents back home; and,

“BE IT FURTHER RESOLVED, That the Secretary of the Treasury be notified, through the Bureau of War Risk Insurance, that this Association stands ready to lend our Government all the assistance necessary in the operation of this war work.”

The motion to adopt the resolution was duly seconded and it was unanimously carried.

Judge Wm. E. Hawkins presented the following resolution and moved its adoption. The motion was duly seconded and the resolution was unanimously adopted:

“RESOLVED, That our President shall appoint a committee of five on representative attendance, whose duties shall be as follows:

"1. To encourage the organization and maintenance, in each county of this State, as far as practicable, of a County Bar Association, which shall be affiliated and shall collaborate with this Association in all matters related to the organization of courts and the administration of justice thereon, and particularly with reference to practice and procedure.

"2. To take under consideration the entire matter of representation of such County Bar Associations in this Association, and, if such representation be considered feasible and advisable, to devise and to report to this Association, at its next meeting, a plan therefor, including necessary changes, if any, in our Constitution and By-laws. Notice of such proposed changes is now here given.

"Wichita Falls, July 5, 1918.

"(Signed) Wm. E. Hawkins, A. H. Carrigan, H. L. Moseley, James W. McClendon."

THE PRESIDENT: I think a resolution to work along this line is very much to the point. There has been no systematic effort to organize bar associations to collaborate with the State Association and develop the usefulness of this Association as it ought to be.

Something like two years ago the publishers of Cyc, now Corpus Juris, wrote a letter to the Secretary or to the President of this Association, advising that it was their purpose to print in the front of each volume of Corpus Juris the picture of a representative lawyer from each State, to be selected by the Bar Association of that State. Before the last convention of this Association a postcard vote was taken upon that matter by direction of the Board of Directors, and as far as I know, the result of that election has never been reported. It was in the hands of Mr. Kincaid, and he turned over the postcards containing the vote to me after the last session, and as it has never been reported, it seems to me proper that the result of the vote should be now reported.

MR. BARWISE: What percentage of the members voted? I never saw the card. Being a Democrat I want to vote every time there is an election.

THE PRESIDENT: I do not know anything about the matter, except I know that Mr. Kincaid had the postcard ballots printed,

and I assume he used the whole list of members. I have had nothing to do with it except that he turned over to us those cards.

MR. CECIL H. SMITH: In view of the fact that the election has been held under the direction of the Bar Association, I move that the result of it be declared, and that the result be reported to the publishers of *Corpus Juris*.

The motion was seconded and unanimously carried.

MR. ESTES: It appears that Judge Stayton received the highest number of votes. (Applause.)

THE PRESIDENT: Now we will return to the regular program. We will take up the consideration of reports of committees in inverse order, and carrying the subject a little bit, we will have the report of the Committee on Criminal Law.

Mr. W. A. Wright, chairman of the Committee on Criminal Law, read the following report:

#### REPORT OF COMMITTEE ON CRIMINAL LAW.

Wichita Falls, Texas, July 4th, 1918.

*To Hon. C. K. Lee, President of Texas State Bar Association:*

The chairman of your Committee on Criminal Law wishes to state that he has diligently tried to get a meeting of the committee, but the other members thereof have answered not but wholly made default, therefore this report is a report of the chairman alone, and voices only his own ideas and observations.

The criminal law is now and has always been a matter of growth, following the civilization that administers it, and reasonably suitable to the needs and demands of the people charged with its enforcement, thus the jury system ordinarily gives that kind of enforcement of the criminal law that meets the sense of public justice of the community from which the jury is impaneled, and usually suits the particular degree of civilization reached by that community. It is what they want and what they are entitled to. However perfect a system of criminal law may be, after all its administration and enforcement will but reflect the ideals, sentiments and ideas of that community in which the court sits charged with its enforcement.

Texas has a code of criminal laws well abreast of the most enlightened jurisprudence of this day. Offenses against the State, offenses affecting the right of suffrage, religious freedom, against public justice, against public peace, against public morals, against public policy affecting the public health, against public property, affecting commerce and coin; offenses against the person, against reputation,

against property, and such other miscellaneous offenses as have been deemed wise and proper by our Legislature, have all been clearly defined and appropriate penalties fixed for a violation thereof, so that it is almost inconceivable that any human conduct that ought reasonably to be punished as a crime is left undefined and a penalty affixed for the commission thereof.

Texas, too, has an enlightened, and shall we not say a scientific code of criminal procedure, not perfect, but what human wisdom is? But being amended and improved upon from time to time at such times as experience teaches the wisdom and the expediency of such amendments for the better enforcement of the criminal code, and the better security and protection of the citizen charged with crime, who might be innocent of the offense charged. However, the procedure of the courts has at various times called forth the criticism of the press, of the layman and sometimes of the bar generally, but more frequently of that part of the bar that knows least of the conduct of a criminal trial, and whose own experience is confined to the practice and the administering of the civil law. This criticism is not always unjust and not always without merit, it more often happens, however, that those cases of miscarriage of justice that bring forth such criticism is not attributable to any inherent defect in the code of criminal procedure, but to the failure of judge or jury, or both, to properly understand the obligation resting upon them. The law-making power cannot create perfect judges or perfect juries, the best that it can do is to establish just rules of procedure, fair alike to the State and the accused. The two principal criticisms against the courts charged with the administering of public justice are, first: an unnecessary delay by reason of granting continuances, whereby witnesses die, remove from the jurisdiction of the court, and thereby in the end an offender go unwhipped of justice. Second, the reversal by the Court of Criminal Appeals of many cases upon what the laity are pleased to term "technical grounds," when substantial justice has been done. The code of procedure, however, is not responsible in either case. Take the question of continuance upon the part of the defendant. In this State no defendant is entitled to a continuance as a matter of law for the absence of a witness, whatever be the allegations of the application therefor. The court has the power to overrule it and force the defendant to his trial, provided that should an application for a continuance be overruled and the defendant convicted, if it appear upon the trial that the evidence of the witness was of a material character, and the facts set forth in defendant's application were probably true, a new trial should then be granted, and the case either continued or postponed. Surely any person who has shown diligence in attempting to procure his material testimony is entitled to the rights given him by this statute, but it is a fact, well known of all trial courts, that applications for a continuance by the defendant are not always in good faith. The defendant knows the

value to him of delay. Time is usually the best lawyer in the world for the defendant. Memories of witnesses grow bad, the chances for some friend of the accused to soften the testimony of an important witness for the State, death, removals from the State, all of which are in favor of the defendant. Is it any wonder that in most all cases when the case is called for trial the first move of the defendant is a motion for a continuance? One of the district judges of Texas said to me, "Lawyers of my district say that the law of continuance is cut out from my code of procedure, and yet I have only had one case reversed for failure to grant a continuance," and this judge had tried many criminal cases and had long been a district judge. Now the remedy, when the trial judge has a well founded suspicion that a defendant's application is made for delay only, or is not probably true, let him give the State the benefit of the doubt and force the defendant to his trial and proceed to get his absent witnesses for him. It would be found that it would be a rare occurrence to be compelled to grant a new trial under the statute. In this day of telegraph and telephone reaching to remote hamlets, farms and ranches, in ninety-nine cases out of one hundred, the witnesses can be procured in a short time, and to this end we ask the Association to recommend to the Legislature that they pass a law providing that any district judge may, either by telephone or telegram, tell any sheriff to send a witness, naming him, to the court at a certain time and place, or, if it is a case where an attachment would be proper, to tell the sheriff to bring him, and that would be all the process necessary, and upon proper voucher being issued by the judge, the telegraph or telephone company would be paid for their services by the State. If this is done, and the judges should see fit to act as herein indicated, continuance for delay only will almost be a thing of the past. We do not mean by anything here said that the court should force a defendant into trial, when a good application for a continuance has in good faith been presented to him; the judge must use a sound discretion. My own experience is that an experienced judge will rarely err against the defendant. Fraud and bad faith somehow show themselves, notwithstanding the words of an application for a continuance may seemingly be true. In many cases the judge will know the witness, and his very name may imply bad faith.

To the criticism that the appellate court reverses many cases upon technical grounds where substantial justice has been meted out to the defendant, we say that this criticism does not appeal to the trained legal mind in so far as it may be a criticism of our Court of Criminal Appeals. The law is the law, a rule prescribed, made to be followed, and when the district courts do not follow it they ought to be reversed. To illustrate, there is a case reported in our Court of Criminal Appeals Reports where one of the jurors sworn in the case said before going to the court house, "that he was going to get on that jury and convict that fellow;" neither the defendant nor his counsel knew of

the remark of the juror. He qualified as having no prejudice or bias, and knew of no reason why he could not give the defendant a fair and impartial trial. The defendant was convicted. The trial judge overruled the motion for new trial and the Court of Criminal Appeals reversed. Why? The laws of Texas guarantee to the accused a fair and impartial trial by a fair and impartial jury, and the accused in this case had not been granted such a trial. Admit that the accused was guilty, if we fail to follow the rule prescribed in his case you can fail in the case when the accused is innocent, then, if we must take the question of substantial justice, which I understand to mean guilt or innocence in the opinion of some one, independent of an orderly and legal trial, why grant an appeal at all, or why even grant a new trial? The jury who hear and see all of the witnesses are better judges of guilt or innocence than even the trial judge, and surely are better qualified to pass upon such guilt or innocence than the three appellate judges who glean the facts from a record and who never saw or heard the witnesses. No, gentlemen, it will not do, there are no technicalities in the law.

Again, the evils of many reversals are largely due to the eagerness of the trial judge and the district attorney to secure a conviction. They believe the accused guilty, and most of the time they are right; but they would accomplish the same results if they would follow the well known rules of procedure, or, in case of doubt, give the defendant the benefit thereof. Rarely, if ever, would such a course change the result of the jury's verdict.

The chairman of your Committee on Criminal Law wants to make these further suggestions to the Association: Men who have money and are charged with crime are usually represented by counsel of long experience, skill and learning, often several of them arrayed against one young district attorney. I believe that district attorneys should be paid as great a salary as district judges, and that, like district judges, he should be prohibited from private practice in any of the courts in Texas during his term in office, to the end that he devote his whole time and energy in the service of the State.

I further recommend that this Association ask the Legislature for a special officer in each judicial district in the State, with an adequate salary, to be under the direction of the district attorney, and to be appointed by him. That it shall be the duty of said detective to investigate the facts of every crime committed in his district, interview witnesses, get their statements in writing, hunt for any evidence that may be material; keep track of all witnesses, both for the State and the defendant, and have them at court, if possible. It is believed that in the preventing of continuances alone the expense of such officers to the State would be saved. You may say that it is the sheriff's duty to act as above indicated, but a sheriff has many duties. His is an independent elective office. He cannot go beyond his own county, and the sheriff who enthusiastically helps a district attorney

prepare his case for trial, gets interested in it, necessarily becomes the State's partisan, and yet he summons talesmen to fill up a jury, has charge of the jury during their deliberations. Defendant and his counsel become suspicious of him, some view matters with reason. In many of the states the district attorney's office has the aid of men as here indicated. If we had such detectives in Texas we would have unquestionably a better administration of the criminal law.

Another recommendation, as the law now stands the defendant in a felony case who has been convicted may, after term, give his appeal bond, but the defendant convicted in a misdemeanor case must still enter into a recognizance in open court, and should he fail to do so his appeal is gone. This should be remedied. Again, on change of venue in a felony case, it is jurisdictional that the defendant again enter into a recognizance to appear at the court to which his case has been moved. His original bond ought to be for the defendant's appearance at the court in which the prosecution is pending and for any other court to which his case might be removed on change of venue. Mr. Wharton has said that Texas has the greatest criminal court in the world. He said it at the time when that great trio of Judges, Hurt, Wilson and White, sat upon the bench of the Court of Criminal Appeals.

I think this Association would honor itself if it make an appropriation to purchase and have suitably framed portraits of the great dead that have sat upon the bench in the Court of Criminal Appeals of the State of Texas, and have them hung upon the walls of that court room. Judge Clarke, Judge White, Judge Wilson, and that giant intellect, Judge Hurt, all of whom did so much in construing upon sound principles the criminal law of this State, deserve to be remembered in some way by the organized bar of the State.

W. A. WRIGHT, Chairman.

MR. A. H. CARRIGAN: I move the adoption of the report.

MR. WRIGHT: The rule has been in this Association not to adopt a report, but to adopt or reject the recommendations made in the report. There are two recommendations that I think there can be no question about. The defendant in a misdemeanor case, who happens to be in jail and does not have his bond there until after the court adjourns, ought to have the same right as a man charged with felony to file his appeal bond after adjournment. Neither should a defendant be required to enter into another recognizance to appear at the court to which his case has been removed on change of venue, but his original bond ought to cover that. The other recommendations will almost stop continuances in criminal cases, and I know it. I have been too long at the business, and have got too many continuances,



not to know that if you give the power into the hands of a district attorney and make a judge do his duty, there are absolutely very few times in which a continuance is necessary.

MR. MOSES: Would you have any objection to changing the title of that extra officer to "special officer" instead of "detective"?

MR. WRIGHT: No; you can call it anything you want to. You can call him a special officer at the service of the district attorney. Again, district attorneys are not paid as they should be paid. Fifteen dollars a day while he is in actual attendance on a court, and not to exceed \$2500.00 a year, is not adequate compensation to get the kind of attorneys who will go out and fight my friend Dayton Moses there, in a criminal case, and they could not fight me very long. They ought to be paid an adequate salary, and the State ought to require all of their time and all of their attention. In many districts, district attorneys are members of firms doing a large civil business, and the district attorneyship is but a side line to him. That ought not to be. He ought to be required to attend to the State's business and nothing else. Then if you give him this special officer to see that the State is represented in getting its witnesses there, and to see that the defendant is represented in getting his witnesses there, when he doesn't want them there, it will be of great advantage. The State has no one to help it, but the defendant and his friends sleep neither day nor night. They are always on the job. The State does not have an equal show. These are recommendations that it occurs to me are sound and are proper for the just administration of the criminal law of this State.

MR. CARRIGAN: I move that the report be received and the recommendations therein endorsed and adopted as the sense of this Association.

The motion was seconded and unanimously adopted.

MR. POLLARD: In regard to the last recommendation, about the portraits of Judge White and others, I move that the President appoint a committee of three members of this Association, of which Mr. Wright shall be chairman, to take up with members of the Texas Bar Association the matter of personal dona-

tions for the purpose of purchasing these portraits of these justices, to be hung in the Court of Criminal Appeals. I believe the bar of Texas will be willing to donate enough to pay for these portraits, without taking it out of the funds of this Association.

MR. RODGERS: I second the motion.

The motion was unanimously adopted.

THE PRESIDENT: The Chair will appoint as the other two members of that committee Mr. Dayton Moses and Judge R. H. Ward, of San Antonio.

MR. ESTES: Mr. John P. Marrs, of Quanah, has been nominated for membership in the Association, and I move his election.

The motion was duly seconded and unanimously adopted.

THE PRESIDENT: The committee appointed in pursuance to the motion of Mr. George Thompson to look after the listing of the members of the bar, sons of members of the bar, and apprentice or student lawyers in this State, who have gone into the military or naval service, will be as follows: I appoint Mr. George Thompson, of Fort Worth, as chairman, Mr. A. H. McKnight, of Dallas, as vice-chairman, Messrs. F. C. Dillard, of Sherman, G. N. Harrison, of Brownwood, W. A. Wright, of San Angelo, J. A. Germany, of Dallas, Allen D. Sanford, of Waco, J. T. Montgomery, of Wichita Falls, H. L. Moseley, of Weatherford, and John T. Duncan, of La Grange.

For the committee in response to Mr. Dabney's resolution, I will name Mr. Dabney as chairman, but in view of the provision in the resolution in regard to a committee pledging themselves to work and support the resolution, and for the further reason that I think the committee ought to be very carefully selected, I will make no further appointment, but will leave that to the incoming President, that the committee may be selected with care.

The report of the Committee on Commercial Law will now be heard.

MR. G. N. HARRISON: I feel that I should acquit my associates on this committee of any responsibility for the very com-

monplace paper I am going to present to you. I found it impossible to get a meeting of the committee. On Saturday of last week I hastily drafted a report and sent copies to each member of the committee, but, of course, it was impossible for them to communicate with me on the subject. Unfortunately there is no member of the committee here but me, but I am told the chairman is expected to do the work.

Mr. Harrison thereupon read the following report:

#### REPORT OF COMMITTEE ON COMMERCIAL LAW.

Wichita Falls, Texas, July 5, 1918.

*To the President and Members of the Texas Bar Association:*

Your Committee on Commercial Law begs leave to submit the following report:

#### AMENDMENT OF BY-LAWS.

Our President has pointed out to this committee that this Association has no regular committee on Uniform State Laws, and suggested for its consideration the advisability of preparing an amendment to the by-laws of the Association, creating such a committee, adding:

"In the absence of a regular committee on Uniform State Laws it has occurred to me that your committee is the natural one to take up this subject, as the demand for uniformity in State laws is more imperative in commercial matters than in other fields."

The importance attached by the committee to this suggestion will be apparent as this report proceeds.

#### PRESENT BY-LAWS.

Article V, Section 2, of the by-laws of this Association requires the appointment annually by its President of certain standing committees,—among others a committee on Commercial Law. Article VI, Section 4, of said by-laws makes it the duty of this committee "to report the best means to produce uniformity in Commercial Law and usages." Thus, the chief, indeed, practically the only function, of this committee is to promote uniformity in the laws and usages of the States and Territories comprising the Nation, touching the matter of commercial intercourse between them; for it can not be supposed that there is such lack of uniformity in the laws of this State affecting intrastate trade and commerce as calls for committee action in that field,—and we have discovered nothing in the reports of our predecessors to indicate it.

## REPORTS OF PREVIOUS COMMITTEES.

Reports of previous committees, dealing with the subject embraced in the quoted by-law, indicate that they were not always entirely clear as to the scope of their authority and duties under said by-law. There is evidence that they at times felt cramped by the limitations they felt it placed upon their field of activity,—their business being not to create improvement, but uniformity, in the laws they were to consider. But the field is in fact a broad one. “‘Commercial law’ is a phrase of comprehensive meaning, used to designate the whole body of substantive jurisprudence applicable to the rights, intercourse, and relations of persons engaged in commerce, trade, or mercantile pursuits.” It is so comprehensive indeed as to preclude scientific accuracy in practical use. It comprehends all law in any way affecting the myriad, and ever multiplying, activities of that restless business intercourse called “commerce.”

There is a vast deal of law affecting this intercourse, which, however, we do not ordinarily understand to be comprehended by the phrase, “commercial law.” That committees of this Association, when treating this subject in their reports, have not confined their actions to the narrower and colloquial meaning of the phrase, can be demonstrated by a few quotations from their reports. Thus the opening sentence in the committee’s report under date of July 2, 1910, reads:

“In response to the present need of the business world to remove, as far as possible, the uncertainty and vexation arising from the widely different laws of the different States and Territories on matters of daily importance, a consistent and persistent effort is being made to secure uniformity in legislation on those subjects that are so far settled and of such universal application as to make each a proper subject for embodiment in a statute.”

And practically that entire report deals with the vital importance of uniformity in legislative treatment of the various subjects comprehended by the broader meaning of the phrase, “commercial law,”—recommending especially a Uniform Negotiable Instruments Act, a Uniform Bills of Lading Act, a Uniform Warehouse Receipts Act, and a Uniform Sales Act. The by-law above mentioned in quoted, in so far as it describes the duties of this committee, in the report of July 2, 1912; which report urges upon this Association the importance of securing uniformity in State laws, and quotes at length the able address on that subject by President Hiram Glass at Waco the previous year.

From that address, as quoted, we extract the following sentence:

“The adoption of the American Uniform Commercial Acts, and their interpretation by the courts of last resort, in accordance with

the spirit of prevailing mercantile usage, will remove one of the greatest drawbacks to the satisfactory working of our dual political system in its application to business matters, and cannot fail to strengthen that system itself."

The matter was again pressed upon the Association in the report of this committee at its last annual session, from which we quote:

"The Committee on Commercial Law, acting within the limitations provided for its consideration, believe it can render no greater service than to urge upon the Association the continuance of its indorsement and support of the work of the Conference of Commissioners on Uniform State Laws."

"This committee believes that the commercial development of the State of Texas is being hindered by reason of the failure of our State to give more consideration to the subject of uniform legislation, and we earnestly recommend that this matter and its importance be kept before members of this Association, and the people of the State of Texas through every available means, with a view to securing consideration and adoption, by the Legislature of this State, of the acts which have been approved by the Conference of Commissioners on Uniform State Laws, pertaining especially to commercial conditions, and which have been adopted with more or less unanimity by the States and Territories of the American Union, as well as by its possessions."

What has been said places the situation before the Association in its true light; and shows that this committee, whether in keeping with its name and within the scope of its authority or not, has devoted its activities chiefly to stressing the importance of uniformity in State laws operating upon commerce between the States.

#### UNIFORMITY IN OTHER LAWS.

Great good would result if more uniformity in the legislation of the States operating upon matters other than those falling within even the more comprehensive meaning of the phrase, "commercial law" could be secured. But that field is so comprehensive and the impracticability of accomplishing anything approximating the object desired is so apparent that the creation of a separate committee to labor therein is of doubtful expediency. As will later appear, the only possibility of accomplishing anything in either field is the exercise of moral suasion, and by the force of argument. This committee, therefore, believes that one committee is sufficient for all that can possibly be accomplished in the promotion of Uniform State Laws touching any proper subject of such legislation. And if it shall be

deemed advisable to create a committee on Uniform State Laws, we believe that the committee on Commercial Law should be merged therein,—as otherwise the field of activity of the two committees will overlap. But whatever name the committee shall bear,—whether it be called the Committee on Commercial Law, or the Committee on Uniform State Laws,—we recommend that the by-laws of this Association creating said committee make clear its duties and the scope of its authority; and that these be sufficiently comprehensive to enable it to exercise its energies in promoting uniformity in all State laws where uniformity is the chief desideratum, looking to the general good.

#### IMPORTANCE OF UNIFORM STATE LAWS.

Obstructing the flow of commerce between the States composing this Nation is an evil as detrimental to the health of the Nation and its component States as is the obstruction of the natural flow of arterial blood in the human body, upon the health of that body and its component members. Uniformity in the laws touching this commercial intercourse promotes and stimulates it. Radically different laws affecting it retard and obstruct it. In all reports of this committee to this body, uniformity in these laws has been stressed as the matter of paramount importance. Not to improve, but to bring about uniformity in these laws is the prime, if not indeed, the sole object of the creation of this committee.

#### THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

One has only to read the reports to this body of its various committees on Commercial Law, to understand the birth, nature, history and wise and efficient work of the National Conference of Commissioners on Uniform State Laws. In a letter under date March 28, 1918, the chairman of that organization's Committee on Publicity points out that Georgia and Texas are the only American States which have not yet adopted the Uniform Negotiable Instruments Act, drafted and urged by it. That organization, notwithstanding its patriotic and efficient work, has never received legislative recognition by the State of Texas; although commissioners from this State have sometimes been appointed by executive action. It is believed to be the most potent and efficient agency yet created through which progress can be made in promoting uniformity in the laws of the several States.

#### DIFFICULTIES ENCOUNTERED.

But for what has been accomplished, chiefly through the initiative of the above mentioned organization, in creating uniformity in the laws of the several States operating upon business intercourse between the citizens thereof, one might almost despair of bringing about

anything approximating unanimity of legislative treatment of any single subject upon which forty-eight distinct legislative bodies are required to act. As a result of our dual system of government,—dividing as it does sovereign power between the Nation and the States,—the power to produce uniformity of legal fabric in this field of legislative action is beyond the effective scope of either National or State prerogative.

The intelligent and finished manner in which the National Conference of Commissioners on Uniform State Laws has done its work will commend that organization and its product to all thoughtful minds. The legislation it has proposed has been prepared by experienced draftsmen, had finished consideration by the best minds, is being constantly tried in the fire of experience, and its virtues and vices are being revealed and corrected in the light of decisions of the highest courts of States which have adopted it,—the best possible process to create refined and perfect law.

#### THE LIGHT OF HISTORY.

We should profit by the light of our own history. It reveals that the Colonial Confederation was early threatened with disintegration by Colonial laws obstructive to inter-colonial commerce. This danger to National unity and integrity contributed probably more than any other one cause to the creation of our present revered Federal Constitution,—conferring upon the National Congress supposed plenary power to deal with the matter. But after more than a century of experience we are trying to remedy the situation herein considered.—a natural and, seemingly, unavoidable defect resulting from a divided sovereignty.

That it is about as difficult for State institutions to rise above the influence of supposed State interest, as it is for men to rise above the influence of self-interest, is revealed by more recent history,—if the Interstate Commerce Commission has drawn correct conclusions, in reviewing the rulings of various State railroad commissions. But it is not necessary that the obstruction to the natural flow of commerce to be harmful, be intentional. Unintentional obstruction is as harmful as if it were intended,—unless removed when discovered.

#### TRUTH VS. FICTION AND COURTESY.

Our overgrown habit of praising our institutions causes us to indulge in fictitious and fulsome courtesies at the expense of truth.

If we shall not know the truth when we meet it face to face, we shall hardly recognize approaching disaster until it has overwhelmed us. No better maxim for the correct regulation of human conduct was ever uttered than finds expression in the following lines:

"This above all,—to thine own self be true;  
And it must follow, as the night the day,  
Thou canst not then be false to any man."

He whose words are shaped, or whose conduct is controlled by a cringing courtesy or a popular fiction, is to himself untrue. He is unfaithful to his fellowman and to the State. His life is a fiction. As a human entity he has no *real* existence.

It is the truth that our legislative laboratories are producing a poorly finished and unrefined product. That our Legislatures have ceased to be deliberative bodies is a fact, to conceal which is only self-deception. The fields of State legislative endeavor are not, as a general rule, attracting our most capable minds. The reason for all this is apparent. It need not be stated here. Suffice it that the fact be frankly recognized. And yet the mind of man is not called to grapple with a more difficult nor a more important temporal problem than the creation of constructive legislation.

The wonderful progress of the age in which we live begets ambitious feelings in the legislative mind, as it does in other minds. It produces the conviction that nothing has been done in the past which cannot be improved upon in the present. This lends a stimulus to novelty in endeavor, which, coupled with the cumbersome machinery of our legislative mills, and the haste engendered to dispose of the huge grists they are required to grind, results in a crude and unworkable product. The finished touch of a competent draftsman is conspicuously absent in all our legislation.

These faults are remedied, when "ready to wear" legislation is presented for our approval, which has for its warp and woof the wisdom, comprehensive knowledge, skill and experience of the able minds that are earnestly laboring through the agency known as the National Conference of Commissioners on Uniform State Laws, not only to create uniformity in, but to improve the quality of, legislative output in this field; located between the boundaries of National and State sovereignty,—so far as the power to compel uniformity is concerned.

#### FAVORABLE COMMITTEE ACTION OUR ONLY HOPE.

The really important legislative work of today is done in the legislative committee rooms. This is made clear in an able and most interesting pamphlet, composing Supplement No. 1 to the Annals of the American Academy of Political and Social Science, recently issued, and worthy of careful reading by every member of this Association,—from which we quote:

"The real work of the Legislatures, upon which the quality of legislation depends, is fundamentally the work of the committee.



With them rests the burden of sifting from the innumerable bills presented those worthy of consideration by the whole house, and upon them is laid the duty of revising, amending and presenting these measures in what is usually their final form. They are the only agents, as yet developed in this country for this purpose, upon which responsibility can be lodged."

These committees are our real parliaments. In them only can deliberation and finished consideration be had. And when laws have come favorably out of the committee crucible they are almost sure to receive legislative approval. It is before these committees, then, that practicable work toward accomplishing the object in view is possible. Here must the committee seeking uniformity in State laws labor,—not before this Association. Here, if anywhere, may *efficient* work be done,—and "efficiency" is the greatest word in the world's vocabulary today.

Recommendations and reports to this body, stressing the desirability of this uniformity in State laws, is lost energy. The correctness of all that has been, and of all that can be said in favor of it, has been, and will be, conceded. *Action* is the great desideratum. And it must be before the only agency capable of granting relief. This is the last and only hope. The inertia of the Legislature must be overcome. And it must be persuaded to adopt the finished work of a more experienced and skillful craftsman,—a difficult task. Yet no State in the Union has suffered as has Texas from self-imposed laws inimical to capital, and the natural flow of commerce.

#### COMMITTEE RECOMMENDATIONS.

This committee recommends that the President of this Association appoint a strong committee, possessing influence with the executive and legislative branches of the State Government; that said committee be instructed to prepare a legislative program, comprehending all the Uniform State Laws drafted and approved by the National Conference of Commissioners on Uniform State Laws, that shall receive the approval of said committee, and the adoption of which it shall deem practicable and possible; that said committee be further instructed to secure, if possible, executive approval of, and agreement to submit, and urge the adoption of this program of legislation; and, if successful in this, to follow, by constant and persistent effort, before legislative committees, and before both houses of the Legislature, to secure the adoption of this legislative program.

#### THE TIME PROPITIOUS.

Just now, when the stress of war has compelled co-ordinate action by the States, and when they are rapidly becoming, under the bond of National union, and with the Nation's guidance, one indissoluble

and dynamic unit in action, to promote the brotherhood and the freedom of mankind, would seem to be the crucial moment to persuade the law-making agencies in our State to so shape its legal fabric that it can be woven into and become a part of that symmetrical whole so desirable to the unobstructed interchange of trade and commerce between the sovereign States composing this sovereign Nation. The times, the conditions,—everything, tends to stimulate the adoption and extension of this legislative comity between the States, to supply the constitutional lack of legislative prerogative hereinbefore indicated, knit closer to the bonds of union, strengthen the sinews of the Nation, remedy this manifest weakness and supply this manifest need.

Those composing the committee herein recommended will not be lobbyists, within any meaning of that much abused word. No one is a lobbyist who receives no fee and has for his clientele every man, woman and child in the State of Texas.

It goes without saying that this committee recommends the continuance by this Association of every character of co-operation it has heretofore extended to the National Conference of Commissioners on Uniform State Laws in the valuable work that organization is doing.

Respectfully submitted,

G. N. HARRISON, Chairman.

MR. DABNEY: I move the adoption of the report, and in moving it I wish to say that I think it is a pity that the reading fell at a time when we are closing, so that it could not receive the attention that such a fine document deserves. It shall be printed in our Proceedings, and I invoke the reading of it by all the members of the Association when it is distributed. I move the adoption of the report and the endorsements of its sentiments and its recommendations.

The motion was seconded and unanimously adopted.

On motion of Mr. Estes, duly seconded, Mr. P. B. Cox, of Wichita Falls, was unanimously elected a member of the Association.

The following forty-seven gentlemen were elected to membership during this meeting:

Akin, J. W. ....	Wichita Falls, Texas
Allday, Martin L. ....	Burkburnett, Texas
Bibb, W. Lindsay ....	Wichita Falls, Texas
Blankenship, J. M. ....	Wichita Falls, Texas
Boone, T. R. ....	Wichita Falls, Texas

Brooks, E. T. ....	Anson, Texas
Bullington, Orville .....	Wichita Falls, Texas
Carrigan, A. H. ....	Wichita Falls, Texas
Chauncey, W. B. ....	Wichita Falls, Texas
Cox, P. B. ....	Wichita Falls, Texas
Darden, J. W. ....	Clairemont, Texas
Davenport, John .....	Wichita Falls, Texas
Dean, S. W. ....	Navasota, Texas
Donald, Paul .....	Bowie, Texas
Dooley, J. B. ....	Amarillo, Texas
Felder, C. B. ....	Wichita Falls, Texas
Fitzgerald, W. E. ....	Wichita Falls, Texas
Forgy, W. E. ....	Archer City, Texas
Greenwood, Thos. B. ....	Palestine, Texas
Hankins, M. M. ....	Quanah, Texas
Henderson, Nat .....	Wichita Falls, Texas
Huff, R. E. ....	Wichita Falls, Texas
Hunter, T. F. ....	Wichita Falls, Texas
Jaquet, S., Jr. ....	Houston, Texas, (Chicago, Ill.)
Jones, F. S. ....	Wichita Falls, Texas
Kimbrough, W. H. ....	Amarillo, Texas
Latham, Homer B. ....	Montague, Texas
McConnell, H. G. ....	Haskell, Texas
McFarland, C. M. ....	Wichita Falls, Texas
Marrs, Jno. P. ....	Quanah, Texas
Martin, Bernard .....	Wichita Falls, Texas
Mathis, Ralph P. ....	Wichita Falls, Texas
Montgomery, J. T. ....	Wichita Falls, Texas
Moses, Dayton .....	Fort Worth, Texas
Moss, A. S. ....	Memphis, Texas
Napier, E. W. ....	Wichita Falls, Texas
Nelson, Walter .....	Wichita Falls, Texas
Nutt, Horace .....	Wichita Falls, Texas
Ogle, J. R. ....	Wichita Falls, Texas
O'Neal, Ben G. ....	Wichita Falls, Texas
Pope, W. S. ....	Anson, Texas
Stoneham, Hal B. ....	Navasota, Texas
Scurry, Edgar .....	Wichita Falls, Texas
Terrell, Ben M. ....	Fort Worth, Texas

Weeks, Harry C. .... Wichita Falls, Texas  
Weeks, W. F. .... Wichita Falls, Texas  
Weldon, H. F. .... Wichita Falls, Texas

THE PRESIDENT: We will hear from the Committee on Legal Education and Admission to the Bar.

MR. C. S. POTTS: This report is tendered by me on behalf of Chairman Ballinger Mills, of Galveston, who is unable to be present. The report has been considered by four members of the five members of the committee. The fifth member, who is Randolph L. Carter, of San Antonio, is engaged in the more valuable occupation of helping to whip the Germans at the present time, but the rest of us have given some attention to the subject. The majority report of the committee is signed by Ballinger Mills, R. A. Sexton and C. S. Potts. My distinguished friend from Parker, Mr. H. L. Moseley, dissents from the recommendations in the majority report.

The report is as follows:

REPORT OF COMMITTEE ON LEGAL EDUCATION AND  
ADMISSION TO THE BAR.

*Honorable C. K. Lee, President of the Texas State Bar Association.*

DEAR SIR: Your Committee on Legal Education and Admission to the Bar begs leave to make the following report:

It is a matter of very great importance to the State and to society in general that a high standard of personal character and professional training be maintained among the members of the legal profession. As members of an honorable profession, they are engaged in making a livelihood for themselves and their families; but if they are not doing much more than that they are not living up to the high ideals that they should set before themselves as a profession. They are examined by the State and commissioned as special officers of the courts of justice, and to them the State has a right to look in times of peace as well as in times of war, for many forms of unselfish and patriotic service.

The importance of maintaining the standards of the profession, ethical and educational, will be readily appreciated by any one who will give even a brief survey to the very important political and social services that are, and of right ought to be, performed by the members of the bar. For example, it is to them that society must look in very large measure for the enforcement of the criminal law, that great body of rules of conduct by which society seeks to protect itself from evil-doers and to preserve public order. It is to them, also that we

must look for the efficient administration of justice as between man and man. From the members of this profession, too, society has always drawn and will always continue to draw a large per cent of their law-makers and law-administrators, while the judicial department is necessarily and exclusively recruited from the bar. As a stream cannot rise above its source, it is impossible to have a judiciary strong, courageous, and independent, whose members are recruited from a bar which fails to maintain reasonable standards of ethical and professional fitness. In the opinion of your committee, a very considerable part of the popular outcry against the courts is justified by the facts, and is, in fact, an indictment against the legal profession in whose hands the machinery of justice is almost exclusively placed. "The failure of the court house" is to a very large extent the failure of the legal profession.

The importance of maintaining adequate standards for admission to the bar is further emphasized by the great difficulty or the great reluctance shown by members of the bar to purge the profession of unworthy men who have once been admitted to its privileges. Your committee has known of very few cases of disbarment, although there are many men holding licenses to practice law who are either wholly ignorant or wilfully disregarding of the ethics of the profession. There are others—not a very large number, we trust—who are wanting in common honesty and who persistently violate the laws of the land. In theory they are officers of the court to assist in the administration of justice; in fact, they are minions of evil, who take advantage of their privileged position to clog the machinery of justice and to prey upon the community they were licensed to serve. The fact that such men, once admitted to the bar, are seldom or never expelled from it urges upon us the imperative necessity of ceasing to hold out to the public as honest, honorable, and learned in the law, men who lack all the qualities that should characterize the members of this quasi-public profession.

#### IS THE LAW A LEARNED PROFESSION?

The law has always been classed as one of the learned professions. And certainly, measured by its more illustrious representatives, it deserves that honorable classification. If measured by the attainments, literary and professional, of the average member of the bar, the profession might still be classed as learned, for these attainments are the result of a very considerable amount of diligent study and practical experience. If, however, we look at the qualifications demanded of those who would enter the profession, we are bound to admit that the law has fallen far behind the other professions with which it was formerly classed, and is now entitled to be called learned.

Perhaps there is no better way to realize how inadequate are the requirements for admission to the bar than by comparing them with

those required by the several States for admission to the practice of medicine. The data for making this comparison are taken in part from a tabulation of the requirements in the several States for admission to the bar, which is attached to, and made a part of this report, and marked "Exhibit A"; and in part from an address by Professor Walter W. Cook, of the Yale Law School, delivered at the last meeting of the American Bar Association, held in September, 1917, at Saratoga Springs. (See Reports American Bar Association, Vol. XLII, 1917, p. 547.)

To begin with, consider the respective amounts of general education required by the States for admission to the bar on the one hand and for admission to practice medicine on the other. Twenty-eight States prescribe no preliminary education of any character for admission to the bar; twenty-one States or Territories require a high school course or its equivalent, while two more require a grammar school education. "Boards of bar examiners," says President Richards of the Association of American Law Schools, "are, as a whole, rather lax in enforcing these restrictions, some of the equivalents recognized being decidedly farcical." In other words, considerably more than half of the States make no general educational requirements whatever of its future lawyers, and in some of them the ability to write an intelligible sentence need not be demonstrated, since the examinations are oral, while in one, Indiana, no examinations at all are required.

In medicine, on the contrary, the applicant for license in every State but four must have completed a full four years' high school course before beginning the study of medicine. Not only so, but in seventeen of the States one full year of college or university work is required in addition to the high school course, while in sixteen of the States two years of college work are necessary. It is safe to say that, in so far as the minimum requirements are concerned, the young doctor upon entering his profession is at the very least two years ahead of his brother lawyer, in the field of general education.

But how is it, let us ask, in the field of professional education and training? Here the comparison is still more discreditable to the members of our profession. Every State in the Union except one requires that the applicant for a license to practice medicine, before being allowed to take the examination for a license, shall be a graduate from a reputable medical college. In law, on the other hand, not a single State makes a similar requirement. Not only so, but no State in the Union requires of its would-be lawyer any attendance whatever upon a law school, the haphazard, more or less unguided, "reading" of law in a law office or elsewhere being still accepted as a sufficient preparation.

In the matter of the length of time required to be devoted to professional preparation, our profession does not show to any better advantage. The medical course which the future doctor must have completed before he can apply for examination covers a period of four

strenuous years, and there is a growing movement to require a fifth year as interne in a hospital before the M. D. degree and the license to practice medicine are granted. In law, on the other hand, the most rigid minimum requirement prescribed by any State for the embryo lawyer is that he shall have "read" law in a law office or studied in an approved law school for a period of three years of thirty-six weeks each. Only twenty-five States have the three-year requirement, while eight prescribe two years and two one year. In the remaining thirteen States, no time limit for the study of law is prescribed, though most of them name the subjects or the books which should be studied and upon which the examinations are to be based.

On the whole, it is probably within the truth to say that the minimum professional requirement for admission to medicine represents three times as much study and effort as is required for admission to the bar. "Looking over the whole field," said Professor Cook in the address already referred to, "could there be a greater contrast than that which exists between the standards of preparation demanded by the two great professions of medicine and law? With the prevailing low standards for admission to the bar, is it surprising that the legal profession is full of incompetent, poorly trained men who mismanage their clients' affairs and clog the courts with useless litigation? Who shall say that a large share of the law's delay, of which we hear so much, is not due to the inefficiency of these poorly trained practitioners? Obviously the law is, and always must be, a complex science—in this, it only reflects the human relations which it governs. Can we expect it to work satisfactorily if we put in charge of it poorly trained men? Let us remember that a poor system may work fairly well if managed by the well trained, but that the best system in the world will not work satisfactorily if in charge of those who do not understand its mechanism?"

#### THE ELIMINATION OF THE UNFIT.

In advocating the adoption of more rigid requirements for admission to the bar, we are sometimes met with the argument that we should keep the profession democratic by licensing persons with small professional training and then trust to the "survival of the fittest" as a means of getting rid of the undesirable. This position, in the opinion of your committee, is utterly untenable. In the first place, it loses sight of the fact that the State, by the grant of a license, represents to the public, who cannot know the technical qualifications of members of the bar, that the holder is not only a person of character but is possessed of sufficient technical training and experience to be safely entrusted with the business interests, or even the life or liberty of those who may demand the services of an attorney. How can we, as members of the profession, continue to ac-

quiesce in the States representing to the innocent public, as qualified, men who are not qualified either by general education, by professional training or by practical experience?

In the second place, we are quite sure that the struggles by means of which the least fit are eliminated are largely responsible for the breaking down of the honorable traditions with which its members are regarded. In the unequal struggle for existence, the unprepared lawyer gradually yields to the temptations that beset him on all sides, and, before he knows what has happened, he has joined the ranks of the "ambulance chasers," the jury fixers, the fomenters of litigation—parasites all, gnawing at the vitals of the body politic.

#### DEFECTS OF THE TEXAS SYSTEM OF ADMISSION TO THE BAR.

Having attempted to show that the standards for admission to the bar throughout the country are far from being satisfactory, your committee wishes to point out some special defects in the system now in use in our own State.

In the first place, attention is called to the fact that no general educational qualification is required. It is true that the boards of examiners are authorized to reject an applicant who, in their opinion, shall show himself so deficient in general education as not to be capable of performing the duties of an attorney. But it should be noted that no examinations in the literary branches are ever held, and it is safe to say that only in the most flagrant cases, if at all, have applicants been rejected for lack of general education. We believe this defect should be remedied by prescribing some fairly definite amount of general education, at least equivalent to a four years' high school course.

In the second place, our laws do not prescribe any definite length of time during which the applicant shall devote himself to the study of the law, nor does it prescribe that such study shall be pursued in a law school or even under the guidance of any attorney-at-law. It is true, a course of study is prescribed in the rules adopted by the Supreme Court, but the examinations in many cases are so easy that only a few months of preparation are ordinarily required to pass them. During every year, in normal times, many students of the Department of Law of the University of Texas withdraw after the completion of only a part of the course prescribed for graduation, in many cases as little as one-third of it, and pass the bar examinations with very creditable grades. In fact, there have been instances, so your committee is informed, of men who, after having passed the bar examinations and been licensed to practice law, have entered the University law school and have been unable to pass successfully the courses in contracts, torts, criminal law, and other courses prescribed for students beginning the study of law.



## A CENTRAL BOARD OF EXAMINERS.

Perhaps the gravest defect of the system in use in this State is the multiplicity of boards and the variations in the standards maintained by the several boards. There are now nine boards of examiners, one for each of our nine Courts of Civil Appeals. Obviously, with such an arrangement, a uniform standard of admission is impossible. As a result we hear of young men traveling across the State to reach this board or that, which, for the time being, is reputed to be "easy."

That there is great diversity in the examinations as given by these boards is abundantly shown by the table presented herewith (Exhibit C), showing the number of applicants at each of the eight older boards, the number of applicants failing to pass, and the percentage of failures, during the period from 1910 to 1915. Out of 1049 applicants before the eight boards during that period, 125, or nearly 12 per cent, failed. Of the 81 applicants at the Fort Worth board, however, 30 failed—or 37 per cent; Galveston failed, 20.2 per cent; Dallas, 10.7 per cent; San Antonio, 10 per cent; Texarkana, 8.9 per cent; Amarillo, 7.6 per cent; El Paso, 2.8 per cent; while the Austin board, during the three years, from 1912 to 1915, for which the figures are available, has a batting average of 1000 per cent, having passed 113 out of a total of 113 applicants. In justice to the Austin board, however, it might be stated that the average preparation of the applicants there is considerably higher than at the other boards, the applicants being largely composed of students of the University Law School.

From the foregoing facts it is clear that we have, not one standard, but nine different standards, and none of them as rigid as they should be. The obvious remedy for this situation is the abolition of the existing boards and the creation of one board under the direction and control of the Supreme Court. A bill for this purpose, drawn by Dean John C. Townes, of the Department of Law of the University of Texas, at the request of members of the recent legislative investigating committee, is made a part of this report (Exhibit "D").

In the opinion of your committee, the creation of a central board of examiners is our first and most urgent need. It is the place to begin in the process of tightening up our standards of admission.

## RECOMMENDATIONS.

By way of summary, your committee makes the following concrete recommendations:

- (1) That applicants for admission to the bar be required to show general educational qualifications equivalent to a full four years' course in the high school.
- (2) That applicants for admission to the bar be required, before being allowed to take the examinations, to produce proof of three

years of technical study of the law in an approved law school or under the guidance of an attorney who has had as much as five years practice at the bar.

(3) That the existing boards of examiners be abolished and that there be created in their stead a central board of examiners, to be appointed by the Supreme Court, and that the Supreme Court, with the advice of the board, be authorized to prescribe the course of study and fix the rules to be observed in the conduct of the examinations.

BALLINGER MILLS, Chairman.

R. A. SEXTON,

C. S. POTTS.

#### MINORITY REPORT.

I disagree with the above report of the committee, and cannot concur in the recommendations offered. In my opinion a more liberal, rather than a more strict, policy regarding legal education and admission to the bar should be adopted and pursued in this State. Believing, as I do, that the legal fraternity constitutes the very best citizenship of our State, and more greatly contributes to its general welfare than any other class or profession, in my opinion, instead of erecting barriers we should make it more easy for our young men to become lawyers. I recommend that our present law be not changed, but commended and allowed to stand.

H. L. MOSELEY.

## EXHIBIT—RULES FOR ADMISSION TO THE BAR.

State	GENERAL EDUCATION.	LEGAL EDUCATION.		Number of Examining Boards.	License Granted on Diploma from Law School.
		Time Devoted to Law Study.	Where Obtained.		
Alabama.....	None prescribed	18 months	In law office or rec-	one	Yes
Arizona.....	None prescribed	3 years of study	ognized law school.	one	Yes
Arkansas.....	None prescribed	None prescribed.		one	
	(Examinations to practice in circuit courts are held by the board appointed by the Circuit Court at Little Rock. Another examination is required for practice before the Supreme Court.)				
California.....	None prescribed	None prescribed.	None prescribed.	Three, one in each	Yes
		(Must be stated in application.)	(Must be stated in application.)	District Court of Appeals (oral examination).	
Colorado.....	Graduation from high school or preparatory school, or exam. before State Supt.	3 years, beginning after 18 years of age.	Law office or approved law school.	One, of five members.	
Connecticut.....	Graduation from high school, college, or approved preparatory school.	3 years after 18 years of age.	Law office or law school.	One, of fifteen members.	
Delaware.....	Graduation from a university or college of good standing, or an examination in the elements of a liberal education. These requirements must be satisfied and a certificate secured from Board of Examiners and filed for record before the study of the law is begun.	3 years.	In office of attorney of ten years standing.		
Florida.....	None prescribed	No definite period is named, but an extensive course of reading is prescribed.		one	Yes
Georgia.....	None prescribed	No time named, but course of study prescribed.			
Idaho.....	None prescribed	None prescribed.	None prescribed.	One, in each Superior Court District.	Yes
		(Must be stated in application.)	(Must be stated in application.)	one	

		3 years of 36 weeks each	In law school or law office.	one	Yes
Illinois.....	High school diploma or its equivalent.	None prescribed.		one	
Indiana.....	None prescribed (No examination as to legal attainments may be given if applicant objects.)	None prescribed.		one	
Iowa.....	Three-year high school course or its equivalent.	3 years	Law office or approved law school.	One, composed of Atty. General and 5 members appointed by Sup. Court.	
Kansas.....	Three-year high school course or its equivalent.	3 years	Law office or law school.	one	
Kentucky.....	None prescribed	None prescribed.		Circuit Judge and 2 attorneys constitute the boards.	Yes
Louisiana.....	None prescribed	3 years	Law office or law school.	four	Yes
Maine.....	None prescribed	3 years	Law office or law school.	one	Yes
Maryland.....		2 years	Law office or law school.	one	Yes
Massachusetts.....	Four-year high school course or its equivalent.	3 full years	Law office (with not more than 8 weeks vacation each year) or law school (4 years if in a night law school).	one	
Michigan.....	Four-year high school course or its equivalent.	3 years	Law school or law office.	one	Yes
Minnesota.....	Latin, English History, American History, composition and rhetoric, and common school branches.	3 years		one	Yes
Mississippi.....	None prescribed	None prescribed.		Each chancellor acts as an examiner and passes papers to chancellor in another district.	Yes
Missouri.....	Grammar school education, plus knowledge of Civic, Amer. and English literature, Gen. History and Amer. and English Constitutional History.	No time is prescribed, but course of study is.			
Montana.....	None prescribed	2 years.		one	
Nebraska.....	Three-year high school course.	3 years.	Law school or law office.	one	Yes
Nevada.....	None prescribed	None prescribed.		One in each district.	

## RULES FOR ADMISSION TO THE BAR—Continued.

State	GENERAL EDUCATION.	LEGAL EDUCATION.		Number of Examining Boards.	License Granted on Diploma from Law School.
		Time Devoted to Law Study.	Where Obtained.		
New Hampshire.....	None prescribed	3 years. (Application must be filed with Sup. Ct. at time of begin- ning study of law.)	Law school or law office.	one	
New Jersey.....	High school course or its equivalent.	3 years.	Law school or law office.	one	
New Mexico.....	None prescribed	2 years.	Law school or law office.	one	
New York.....	Applicants, not graduates of approved colleges, must be examined by State University in En- glish (3 years); Math. (2 years); Latin (2 years); Science (1 year); History (2 years); before beginning study of law.	3 years.	Law school or law office.	one	
North Carolina.....	None prescribed	2 years.	Law school or law office.	One, the Sup. Ct.	
North Dakota.....	None prescribed	3 years.	Law school or law office.	one	
Ohio.....	Four-year course in high school or its equivalent.	3 years.	Law school or law office.	one	
Oklahoma.....	High school course or its equivalent.	3 years.	Law school or law office.	one	
Oregon.....	None prescribed	1 year.	Law school or law office.	one	
Pennsylvania.....	Applicants, other than college graduates, must pass examination on course equivalent to 4- year high school course before registering as a student at law. Applicant must advertise his intention to take the bar examination in two newspapers for four weeks before making application.)	3 years.	Law school or law office.	one	
Rhode Island.....	High school course.	2 years if college graduate, other- wise 3 years.	Law school or law office.	one	Yes
South Carolina.....	High school course.	2 years of 36 weeks each.	Law school or law office.	one	Yes
South Dakota.....	High school course.	3 years.	Law school or law office.	one	Yes

Tennessee.....	None prescribed	None prescribed. (Time must be shown in application.)		one	
Texas.....	None prescribed	None prescribed.		nine	Yes
Utah.....	None prescribed	None prescribed.		one	
Vermont.....	High school course. (Proof must be made and certificate filed show- ing commencement of study of law.)	Law school or law 3 years.	Law school or law office.	one	
Virginia.....	None prescribed	None prescribed.		one	Yes
Washington.....	Full 4-year course in high school or its equivalent.	2 years.	Law school or law office.	One, composed of faculty of Law School of Univer- sity of W. Va.	Yes
West Virginia.....	None prescribed	2 years.	Law school or law office.	one	Yes
Wisconsin.....	High school course or its equivalent.	3 years.	Law school or law office.	one	Yes
Wyoming.....	None prescribed	3 years.	Law school or law office.	one	Yes

## STANDARD RULES FOR ADMISSION TO THE BAR.

(These rules were first drawn up and adopted in 1916 by the Section on Legal Education of the American Bar Association. They were then referred to the Committee on Legal Education and Admission to the Bar, and after slight amendment, reported in the present form to the Association. On account of lack of time, they were not acted on by the Association, but were referred back to the Section on Legal Education for its opinion of the changes recommended by the Committee. They will come up again at the coming meeting of the Association and will probably be adopted.)

(1) Examinations for admission to the Bar should be conducted in each State by the board of five members appointed by the highest Appellate Court.

(2) A law diploma should not entitle the holder to admission to the Bar without examination by this board.

(3) The candidate should at the time of his admission be a citizen of the United States.

(4) He should also be a citizen of the State in which he is applying for admission, or prove that it is his intention personally to practice law therein.

(5) There should be an examination by the board as to the moral character of each applicant for admission to the Bar, which examination should be in addition to the requirement of certificates as to his moral character, and in addition to the examination as to educational qualifications. And each applicant should satisfy the board as to his moral fitness to practice law. The applicant should be required to file with the board evidence that he is a person of good moral character which should include the affidavits of three responsible citizens, two of whom should be members of the Bar of the State, and the affidavits should set forth how long a time, when and under what circumstances those making the same have known the candidate and that he is to the knowledge of the affiants a person of good moral character.

(6) Three years' practice in States having substantially equivalent requirements for admission to the Bar should be sufficient in the case of lawyers from other jurisdictions applying for admission on grounds of comity, provided the board after an independent investigation is satisfied as to the moral character and professional standing of the applicant in the States from which he has removed.

(7) There is no necessity for the insertion in the rules of a reciprocal comity provision; that is, of a proviso prohibiting the admission of lawyers from other States on grounds of comity, unless the state from which the lawyer comes extends similar courtesies to lawyers from the Bar of the State in which the candidate is applying for admission.

(8) Every candidate should satisfy the board that he has passed the necessary requirements for entrance to the collegiate department

of the State University of the candidate's State, or of such college or colleges as may be approved by the State Board of Law Examiners, or an examination equivalent thereto, conducted by the authority of the State.

(9) Every applicant should be required to have successfully completed the prescribed course of instruction and passed the examinations of a law school, approved by the board, which requires for the completion of its course not less than three years of resident attendance during the day time, or not less than four years of resident attendance if a substantial part or all of the exercises of the school are in the evening.

(10) At least 30 days before the State board's certificate shall be issued to any candidate who shall have passed the examination, the name of each candidate should be published by the State board in a newspaper of general circulation, and also in a law periodical if there be one within the State jurisdiction.

## EXHIBIT C.

## STATISTICS OF BAR EXAMINATIONS IN TEXAS, 1910-1915.

District	Applicants	Passes	Failures	Percentage of Failures
<b>I. Galveston:</b>				
1910-12 .....	74	61	13	17.6
1912-15 .....	89	69	20	22.4
<b>Total .....</b>	<b>163</b>	<b>130</b>	<b>33</b>	<b>20.2</b>
<b>II. Fort Worth:</b>				
1910-12 .....	47	29	18	38.3
1912-15 .....	34	22	12	35.3
<b>Total .....</b>	<b>81</b>	<b>51</b>	<b>30</b>	<b>37.</b>
<b>III. Austin:</b>				
1910-12 .....	—	—	—	—
1912-15 .....	113	113	00	00
<b>Total .....</b>	<b>113</b>	<b>113</b>	<b>00</b>	<b>00</b>
<b>IV. San Antonio:</b>				
1910-12 .....	61	58	3	3.5
1912-15 .....	61	52	9	15.
<b>Total .....</b>	<b>122</b>	<b>110</b>	<b>12</b>	<b>10.</b>
<b>V. Dallas:</b>				
1910-12 .....	85	83	2	2.1
1912-15 .....	67	53	14	20.9
<b>Total .....</b>	<b>152</b>	<b>136</b>	<b>16</b>	<b>10.7</b>



District	Applicants	Passes	Failures	Percentage of Failures
<b>VI. Texarkana:</b>				
1910-12 .....	129	129	00	00
1912-15 .....	174	147	27	15.5
Total .....	303	276	27	8.9
<b>VII. Amarillo:</b>				
1910-12 .....	24	23	1	4.2
1912-15 .....	55	50	5	9.1
Total .....	79	73	6	7.6
<b>VIII. El Paso:</b>				
1910-12 .....	5	5	0	0
1912-15 .....	31	30	1	3.2
Total .....	36	35	1	2.8
<b>Grand Total.....</b>	<b>1049</b>	<b>924</b>	<b>125</b>	<b>11.9</b>

The statistics for the two-year period of 1910-12 are taken from the record of the Committee on Legal Education and Admission to the Bar of the State Bar Association at the Galveston meeting July, 1912. (Proceedings of the Thirty-first Annual Session, page 117.)

The figures for the period of 1912-15 were obtained by personal correspondence with the clerks of the Courts of Civil Appeals in the several districts.

#### A BILL

#### TO BE ENTITLED

#### AN ACT TO REGULATE THE LICENSING OF ATTORNEYS AT LAW WITHIN THE STATE OF TEXAS.

SECTION 1. Be it enacted by the Legislature of the State of Texas: That from and after this act takes effect there shall be one Board of Law Examiners for the State of Texas. The board shall consist of five lawyers having the qualifications for membership in the Supreme Court of the State. They shall be appointed by that court and shall each hold office for two years and until his successor shall be appointed and qualify. They shall be required to take the constitutional oath of office.

SEC. 2. It shall be the duty of this board, acting under the instructions of the Supreme Court, as hereinafter provided, to decide the eligibility of all candidates for examination for license to practice law within this State and to thoroughly examine each of these as may show themselves eligible therefor, as to their qualifications to practice. This board shall not recommend any person for license to prac-

tice law unless such person shall affirmatively show to the board, in the manner prescribed by the Supreme Court, that he is of such moral character and has such capacity and attainment that it will be of advantage to the public, and particularly of the community in which he may follow his profession for him to be licensed.

SEC. 3. The Supreme Court is hereby authorized and empowered to make any and all rules and regulations which in its judgment may be proper and expedient to govern eligibility for such examinations and the manner of conducting the same, covering, among other points, proper and effective guarantees to insure:

- (a) Good moral character on part of each candidate for license.
- (b) Adequate pre-legal study and attainment.
- (c) Adequate study of the law under proper supervision and guidance for a period of at least two years before coming to the examinations.
- (d) The legal topics to be covered by such study and by the examinations given.
- (e) The time and place for holding the examinations, the manner of conducting same, and the grades to be made by the candidates to entitle them to be licensed.
- (f) All other matters as shall be desirable in order to make the issuance of a license to practice law evidence of good character, fair capacity and real attainment and proficiency in the knowledge of law.

SEC. 4. The fee for such examinations shall be fixed by the Supreme Court, not to exceed \$25.00 from each candidate which shall be paid to the clerk of the Supreme Court at the time application for examination is made. The money thus obtained shall be used first to pay all legitimate expenses incurred in connection with holding the examinations and, second, as compensation to the members of the board under such regulations as shall be agreed upon by the board or determined by the Supreme Court.

SEC. 5. The several examiners shall be subject to removal by the Supreme Court after hearing for incompetency, indifference or inattention to duty.

SEC. 6. It is hereby declared to be within the sound discretion of the Supreme Court by general order to that effect to exempt all graduates of the Department of Law of the University of Texas from taking any examinations by the board as to pre-legal or legal study or attainment, but such graduates must in all instances furnish the evidence as to moral character required of other candidates.

SEC. 7. The Supreme Court shall make such rules and regulations as to admitting attorneys from other jurisdictions to practice in this State as it shall deem proper and just. All such attorneys must be required to furnish satisfactory proof as to good moral character.

SEC. 8. The fee for issuing license shall be \$5.00, to be paid to the clerk of the Supreme Court at the time license is issued. Money thus

secured by the clerk shall be deemed fees of office and must be applied as provided by law as to fees.

SEC. 9. No license to practice law within this State shall be issued by any court or authority except the Supreme Court of the State, under the provisions of this article, and all laws and parts of laws in conflict herewith are hereby repealed.

MR. JONES: How about the correspondence schools over the United States, like the Blackstone Institute or the Sprague Correspondence School of Law, with reference to a legal education?

DR. POTTS: You mean as to what I think personally of their work?

MR. JONES: What is your recommendation in the report, whether or not they are to be excluded from consideration, if a young man obtains a legal education through that medium?

DR. POTTS: I will say, the committee has not gone into that matter at all, and it has not been the subject of discussion. I will say further that the Association of American Law Schools has refused to allow any school to belong to that Association that does any work by correspondence, and, further, that they have refused to recognize, for any purpose, credit or otherwise, the work done by a correspondence school.

MR. JONES: Does the University of Texas at this time have a correspondence school?

DR. POTTS: It does correspondence work in law, but gives no credit toward a degree, and does not recommend it except for those who are unable to go to the University. I move the adoption of the majority report.

MR. KIMBROUGH: I second the motion.

MR. MOSELEY: I presume it will be proper for me to make some remarks in support of my minority report, after which I will make a motion that the minority report be substituted for the majority report. Gentlemen of the Convention, I have not signed this minority report just to be captious, or just to make a discussion. I think it is of sufficient merit to make a minority report, in order that a matter of this sort may be brought before this Association and considered by you. Gentlemen of the As-

sociation, I have always been the friend of young lawyers. I think the greatest compliment that was ever paid me in my life was contained in a letter that was once written by a young man who came to my town and stayed six months and went back to his home in South Texas. The reason he gave for leaving Weatherford, Texas, was that there was a lawyer up there named H. L. Moseley, who was carrying half the bar on his shoulders and he did not want to be carried by him. Now, that was not true, but it shows that I have always been the friend of the young lawyer. I have not got any prepared speech, but I admire the legal profession, and I have got no sympathy with such absolute rot—hear me when I say it, absolute rot—as is contained in this report right here, when it speaks of “ambulance chasers” and disgraceful practice of the bar. I don’t know members of the bar like that in the State. Do you all?

VOICE: Yes.

MR. MOSELEY: Well, I don’t. You have got me beat to a dead moral certainty, if you know members of that sort. I don’t happen to have been associated with them.

MR. BARWISE: You have never traveled.

MR. MOSELEY: I have traveled some, but I never have represented railroads in damage suits. I believe the lawyers are high-minded, high-class citizenship. As I say in my report here, I believe they are the best class of citizenship in the State of Texas. Of course, we have weak brothers. As long as we have our weak human nature we will have lawyers who are not honest, possibly who are not ethical, who are not honorable. But I say to you here today, and I challenge any man to contradict it, that the personnel of the bar of the State of Texas will compare with that of the ministry, will compare with that of the banker, will compare favorably with that of any other profession or any other trade. And, gentlemen, I have absolutely no patience with this destructive criticism of didactic, academic gentlemen, who look at this legal profession from a standpoint away off yonder, and who are not intimately associated with them in the practice, who get up and talk about them like this. Let me read it. It makes me tired. (Laughter.) If I don’t do anything else, I can have the satisfaction, at least, of getting

this out of my system. "In the second place, we are quite sure that the struggles by means of which the least fit are eliminated are largely responsible for the breaking down of the honorable traditions of the profession and for a large part of the popular distrust with which its members are regarded." I ask you if you expect me, as a member of this body, to agree to that sort of rot? You ought not to agree to it. The members of the bar of the State of Texas are not held in distrust in any sense. They are the very best class of citizenship that we have. They are leaders in the community, wherever we find them. They are the men you must go to when you want to see any public enterprise succeed in the community. Don't you know it? It is the lawyers in the country that are the leading citizens in the country. It is the lawyers in the country that you must go to whenever you want any reforms put over in that community. It is the lawyers of the country, gentlemen, that make our laws. It is the lawyers of the country that support our churches today. There was a lawyer yesterday, instead of a preacher, who was called upon to say grace at our elegant banquet. Now, gentlemen, I have no sympathy with this. I am glad this opportunity has come to me. If it has no other result in the world it gives me an opportunity of denouncing what I do not believe to be true, when a man gets up and says lawyers are responsible for the breaking down of the honorable traditions of the profession. "We are quite sure that the struggles by means of which the least fit are eliminated are largely responsible for the breaking down of the honorable traditions of the profession, and for a large part of the popular distrust with which its members are regarded." Gentlemen, you all may stand for that sort of language in this report, but I am not going to stand for it.

"In the unequal struggle for existence, the unprepared lawyer gradually yields to the temptations that beset him on all sides, and, before he knows what has happened, he has joined the ranks"—listen—"of the ambulance chasers, the jury fixers, the fomenters of litigation—parasites all, gnawing at the vitals of the body politic." Isn't that nice stuff for a man to come before a body of lawyers and ask them to endorse? (Laughter.) Do you blame me for dissenting from it? Of course you don't.

Gentlemen, I will tell you, I have absolutely no sympathy in the world for such language as was used yesterday in a paper

that was read by one of the gentlemen, in which he depicted the hell of a state—that is not profanity, but it is scriptural language—of the courts and the procedure and the practice in this State. I have no sympathy with that kind of an argument. We have a magnificent judicial system.

MR. KIMBROUGH: Mr. President, I think the gentleman is wandering from the subject.

THE PRESIDENT: He says it is in his system and he ought to get it out.

MR. KIMBROUGH: I make the point that those remarks are not in order.

MR. MOSELEY: Well, I don't know about that. I think it is perfectly proper for me to give you, Judge Kimbrough, the reason why I do not agree to the language of this report.

MR. KIMBROUGH: All right. Go ahead. I will withdraw the objection.

MR. MOSELEY: Inasmuch as I want to say it anyhow.

MR. ESTES: I do not want to interrupt you, Judge Moseley. The only thing for the Association, as I understand it, to do is with reference to the recommendations of the report, which you dissent from.

MR. MOSELEY: I say I disagree with the report of the committee, and cannot concur in the recommendations also. So I am speaking to that proposition.

JUDGE WEAR: I understand then you do not agree with the majority report.

MR. MOSELEY: Probably you will find out, if you will sit right still and keep quiet. But, gentlemen, to get down to seriousness and leaving joking aside, I think this Bar Association stultifies itself when it permits a report like this to come in, in which lawyers are traduced, and the traditions of our courts are traduced, and you put your stamp of approval on it. I don't believe you ought to do it. That is the reason I signed this dissent. I understood that Professor Potts prepared this report, and he is a teacher of law in the University at Austin;

and I want to pause to say this, gentlemen, that if today we are suffering from any one thing, and the reason we are plunged in the midst of a gubernatorial contest based on our educational—

THE PRESIDENT: I have no objection to your relieving your system, but the Constitution forbids any political discussion.

MR. MOSELEY: I am not going to make any political discussion, but I am going to say the reason is because the professors in our colleges and universities, in their lack of practical experience, and in their academic fervor, are raising the standards of our schools to the extent where they are making a wide gap between the educated and the uneducated. They are getting to the point where the average boy looks at the curriculum and says: "Well, I can't make it and I won't try." That is the objection I have to this report here today. Gentlemen, our Bar Association is full of men who never went to a college, who are not men of extensive education, and yet they have made good lawyers. Some of the finest lawyers this country has ever known were men who had no educational attainments. When Prof. Potts comes here and compares the legal profession with the medical profession, he begs the question because they are not on a parity. Their business is not on a parity. The work that a doctor does is not to be compared with the work that the lawyer does. At least, the lawyer has a Supreme Court to correct his errors, but the doctor buries his. There is just that difference. That is why greater care may be needed in the practice of the medical profession than in the practice of the legal profession. I am heartily in favor of the high school. I have no criticism specially of that. The point I am making is that if this recommendation is adopted, academic as it is, that the young men of this country be required to take a college course, if they are required to make the journey to Austin to be examined by a centralized board, if they are required to put in three long, weary years in a law school, or in the law office of some men—I don't know, gentlemen; the boys may do it in the future, but if it had been the practice when I studied law I never would have got there. I am afraid there will be a dearth of lawyers. I am not in favor of lowering our profession. I do not think we have to do that. According to Professor Potts' own state-

ment, the majority of the States in the Union do not put these requirements on admission to the bar. If a man can go before any one of these committees and can stand the examination, whether he has gone to school thirty days or three years, whether he has attended a law school thirty days or three years, it is immaterial, if he can manage to convince that board that he can and will make a lawyer that will be an honor to the traditions of his profession. So why put these things in here, and why make it so that a poor boy, in other words, cannot be a lawyer? That is the truth about it. A poor boy cannot be a lawyer. I know out at my ranch is the son of one of my tenants, a little crippled boy who somehow got his ankles hurt, and I said to the man: "Send that boy to my office, and I will make a lawyer out of him." He said: "Why, Mr. Moseley, I cannot afford to do that. I cannot pay the expenses of that boy through a college education." He never can, gentlemen, if you put the barriers as high as this report proposes to put them. So I am here today just simply to ask that the matter be allowed to remain at least as it is. That is all I ask of you. As sure as time goes by, you put this barrier up, and after a little bit our academic friends, like Professor Potts, will want other requirements, and as my friend Judge Harrison says, we will have a "drouth" of lawyers in this country. So I think it ought not to be disturbed. I believe my minority report is well taken. When you think that by adopting that report you have got to adopt all that talk about the legal profession, I believe you will come to think like I do.

MR. HARRISON: I believe in this country of repeated drouths the fact is we have always had a splendid crop of lawyers.

MR. MOSELEY: That may be true, but we never had too many. There have never been too many lawyers. In my younger days I thought the requirements ought to be a little higher, but as I got older, and had seen more of my profession, and had come to know them better I have come to resent this criticism that has been made of our courts and our lawyers and the administration of justice. I do not believe that if an uneducated man is admitted to the bar he is going to be a disgrace to it. And so for these reasons, and others that suggest themselves to you,



I move the substitution of the minority report for the majority report, and its adoption by this Association.

JUDGE PERKINS: You say the legal profession and the medical profession are not on a parity?

MR. MOSELEY: One buries his mistakes, and the other carries them up to the Supreme Court.

THE PRESIDENT: Is there any second?

MR. GERMANY: I told him I would second it.

THE PRESIDENT: Do you stay with it?

MR. GERMANY: Yes, sir.

MR. MAYS: I will second it, although I did not tell him I would, and I would like to make a few remarks.

MR. WRIGHT: Is it in order for a substitute for both of them?

THE PRESIDENT: Yes, sir.

MR. WRIGHT: Then I move as a substitute for both of them that this Association adopt the third recommendation of the majority report, and that alone, "that the existing boards of examiners be abolished and that there be created in their stead a central board of examiners." That carries with it the striking out of the educational qualifications and the length of time prescribed for the study of the law. I do not care how high they make the qualifications. A lawyer ought not to be admitted to the practice unless he understands the fundamental principles of law, of equity, of pleading, and of evidence, and when he does convince a board that he understands those fundamental principles, he is qualified to begin the practice of the law. To follow the rules prescribed in recommendations 1 and 2 would have prevented Abraham Lincoln from practicing law, and would have prevented at least one attorney general of the United States, Felix Grundy, from practicing law. As was said yesterday, Henry the Second was a natural lawyer, and there are many natural lawyers. It takes study to make lawyers, but the man who has enough education so that he understands the elements of law has that education that will make him a reasonably good lawyer. In my boyhood Chief Justice Stayton—

not then Chief Justice Stayton—in a letter that I read, said: “I have known of no young man of common sense and energy, who entered the law, who ever yet made a failure.” My own experience is that that is true. Now, your education is a good thing. It is a fact that some years ago Chief Justice Coleridge of England and Mr. Justice Holmes of the supreme bench of the United States entered into a very learned discussion, Mr. Justice Holmes claiming that the lawyer could be over-educated. A gentleman who had been a member of a President’s cabinet, and who delivered the address to my graduating class at the University of Michigan, opened his address in this way: “Beware of the lawyer that reads over one book, for he has got mud on the end of his horns.” Gentlemen, if you go and make a boy who is not a lawyer run the course of study that is there prescribed, he will never have mud on the end of his horns, because he won’t have sense enough to read over one book. The ordinary man can get the technical language of the law from a lexicon. He can understand what “*cestui que trust*” means, “*a mensa et thoro*,” even the Latin “*vel non*,” and “*nisi prius*” and “*a priori*.” He will learn the technical language of the law very soon. There is no analogy between the study of medicine and that of law, because the laboratory, the dissecting room and the hospital are absolutely essential to the man’s studying medicine, but the laboratory, the dissecting room and the hospital of the lawyer are the court room, and no man has ever yet learned how to practice law except at the expense of his clients. (Laughter and applause.) I remember when I was fresh from the law school up there in Grayson County, and probably had the rules of law much better at my fingers’ ends than my friend Frank Dillard, he took me out there to Kentucky Town, in the justice court, and had me out of court in five minutes, because I had not learned yet how to practice law, and I learned my very best lesson from Frank Dillard, and at the expense of my client. So this last rule is a good one, and I do not care how strong the examination may be. That is for the Supreme Court, and it is presumed that it will make it an intelligent and a reasonable one—that is, the committee that it appoints. I heartily disapprove of these boards of the various Courts of Appeals. I know of a young man leaving San Angelo and the Third Supreme Judicial District to travel

all the way to Texarkana to get an easy examination. That ought not to be. The examination ought to be thorough and fair, and ought to see that the men who have taken it have a comprehensive view of the general theory of the law.

MR. MONTGOMERY: I second the substitute for the majority report and for the minority report.

JUDGE WEAR: Mr. President and Gentlemen of the Association: I do not want to take enough of your time to make any extended remarks about this question, but I feel impelled to ask your indulgence for just a few moments, if for no other reason than to state in this public way that I heartily endorse the recommendations contained in the report submitted by the majority of the committee. It, in my judgment, will tend to raise the standard and make more desirable and more efficient and more noble the profession of law and the practice of law. While I have great admiration for my friend here, Mr. Wright—we used to scrap around and play together and a few other things in Kentucky—I do not think his illustration a moment ago was altogether a happy one, when he referred to the fact that such characters as Abraham Lincoln and others whom he named would have been precluded from the practice of law, if such provisions as the one recommended in the majority report had been effective in his days. On the other hand, if those provisions had been in existence, such characters as those would have entered the practice of law by virtue of the determination upon their part that they would overcome every obstacle, and that characteristic in those men is exactly what made them great lawyers and shining marks in the profession. But while those requirements would not keep such characters as those out of the profession, such provisions and requirements do tend to, or would tend to, keep out of the profession the low down scalawags that are a disgrace to the profession today, and there are some of them in the profession, and there is no question about it, I don't care what my friend Moseley may say about it.

MR. MOSELEY: Let me ask you a question. Do you think education will make a man honest?

JUDGE WEAR: No, sir! I don't.

MR. MOSELEY: If he hasn't any character behind him, do you think it will make him honest?

JUDGE WEAR: No, sir. But I do say that there are a lot of fellows who are dishonest, who have not the nerve and the courage to comply with the requirements as contained in the recommendations of this committee, who would, and who do, in the absence of such requirements, enter the profession of law, and that kind of cattle would be kept out. There is no question about that.

MR. GERMANY: Who are the "ambulance chasers"? Are they university graduates? What class are they? You say you know a lot of them. What class are they as to education?

JUDGE WEAR: I am frank to confess that most of them are fellows who have not the advantage of an education, but I will be just as frank to confess that I know some of them who are university men who are ambulance chasers. As far as that is concerned, I can name some of them. I do not hesitate to name them. I earnestly hope this Association will not take any action that will tend to lower the standard of the profession, and it is absolute moonshine to talk about such requirements as this tending to deplete the profession and in that way lowering the standard. I am heartily in favor of the recommendations contained in the majority report.

MR. JONES: I have heard the recommendation of the committee; I have also heard the dissenting report from the committee, and I have heard what Judge Wright had to say. For myself, I am one of the young men who had to stand my examination before one of the boards of Texas, at Galveston, Texas. My struggle to the legal profession was hard, indeed, and I feel that I would be a slacker to my fellowmen if I did not get up here and say a word in defense of the substitute. They can all talk about the three year course, or the course in a lawyer's office, but when I started out to study law I had been crippled in a railroad accident. I had passed through the grammar schools and had attended A. & M. College for two years. There are many such men as myself, from the country, where the wolf has howled at the door, who have had to go out in the world and make a living. They say, or leave the im-

pression here, that the correspondence schools over the United States are not schools such as would equip a man to practice law. I have studied the correspondence school course of the University of Texas. I also studied the correspondence school system of the Sprague Correspondence School, of Detroit, Michigan. I have also studied the system of the Blackstone Institute. I do not believe that any young man who has got nerve enough to fight the battle for two long years and a half, and try to earn a livelihood for his family at the same time, should be deprived of the right to stand this bar examination. We should have one central board, located at Austin, composed of fair, just lawyers, not all professors, but, say one professor from the University, and two lawyers who are associated with the practice of law, and let these young men come before this board on an equal footing, no matter where they get their education, whether it is in some lawyer's office, employed as a stenographer, or whether it is through some correspondence school. Whenever you pass this report that is submitted here, you are going to cut the poor man out, who has to work for a living and support his family, whenever he tries to enter the profession of law. I think this Association should not go on record at this time to cut the poor boy off, whatever his circumstances may be, who may not have a chance to go to the University or to get his education in the way the report prescribes. I have met men who come from the University and stand on the same footing that I do in this court room, and I venture to say that my success, with the same practice and same experience, is equal to theirs, even though I do come from a correspondence school.

The lawyer under whom I worked in Houston, Texas, was a stenographer; I was a stenographer; that man never went to a law school. And there are men sitting in this room right here today, who hold positions with big corporations, and who stand as high as any lawyers in Texas, who never went to a law school. Therefore, I say, if you are going to make a rule, make a fair rule. Let every man that will go before the central board at Austin, and let them all take the same examination. I thank you. (Applause.)

DR. POTTS: I would just like to say for the committee that it does not make any recommendations there that a man shall

attend any law school at all, and certainly it is not the desire of the committee to thrust forward the law school. Nor is it the desire of the committee to insist especially on those educational qualifications. I think the suggestion made by Mr. Wright are very well taken, and the committee was of that opinion, and if you will notice the report, the only one we insist upon is the third recommendation. The others were thrown out more as suggestions as to what the standards probably ought to be. It seems to me that it is very probable that the whole matter of the requirements as to general educational qualifications and requirements and legal educational requirements might be left with the Supreme Court to prescribe. It leaves that flexibility we talk about so much in our discussion of the report. So the committee would not be inclined, especially to insist on that, at least, so far as I personally represent the majority of the committee. I think my friend Moseley was not very serious in his resentment of the language there that seemed to reflect on the profession. It was not the language of the committee. But there are a great many people who do feel pretty strongly that way toward the profession.

MR. H. G. HART: I think I am old enough to be entitled to a respectful hearing in this matter, and having failed to acquire a legal education by any of the methods that the gentlemen suggest, I think my experience ought to command some respect. I believe that what we are wrangling about here is a matter of evidence. We all agree that a man should not be granted a license to practice law unless he is educated. Now, what evidence shall he present to the board that issues that license is the question before the house. Whether a certificate from a school teacher that he has attended a school for a certain length of time shall be accepted as *prima facie* evidence of that education is one of the questions here involved, or whether he shall show by a certificate of some correspondence school that he has devoted two years and a half to a course prescribing certain requirements in regard to qualifications. We also require of him that he shall be a man of good moral character, but we do not attempt to prescribe the evidence by which he shall establish that fact before the board, and the questions are exactly analogous. He must be educated. He must be "learned in the law."

I do not like to use that expression, because the term has been abused to an extent that we permitted men to sit upon benches, that we say ought to be held by lawyers, who were not lawyers, and yet were able to qualify as men "learned in the law." But the whole question is as to whether they are educated in the law or not. Whether they acquire it through a correspondence school, or whether they acquire it sitting at the feet of a good teacher, is immaterial to us; and if we leave this matter to a central board that the Supreme Court shall appoint, they certainly will not permit men to go away from that board with a license to practice law, unless they are educated. So I believe if we refer this matter to this board, created in this manner, we shall have solved the whole question, and that we may leave the question of how they shall acquire it, whether through correspondence schools or otherwise, to the individuals who seek the license.

THE PRESIDENT: In the judgment of the chair, there is a good deal of a tempest in a teapot, because, as Professor Potts points out, while there are three recommendations, there is only one insisted upon. It comes about from his stating it and not reading it. It reads:

"That the existing boards of examiners be abolished and that there be created in their stead a central board of examiners, to be appointed by the Supreme Court, and that the Supreme Court, with the advice of the board, be authorized to prescribe the course of study and fix the rules to be observed in the conduct of the examinations."

So I take it there is not any special conflict between the substitute proposed and the majority report. Is there any further discussion?

MR. RICHARD MAYES: I think that this question underlying this report strikes at such a vital principle that I want to crave the indulgence of the Association for a few moments. There is some history behind this matter.

DR. POTTS: Will the gentleman yield just a moment? So far as I am concerned, Mr. Chairman, I am entirely willing to accept the substitute of Mr. Wright as to educational qualifications.

THE PRESIDENT: Then the substitute is before the house.

MR. MAYS: What I undertake to say is that underlying this report, it seems to me, are two features that I regret to see. The first feature is, whether intended or not, that I can see in it is that its effect is to shut the door of hope upon the worthy young man who cannot meet the requirements of the college education. The second is this: While I am devoted to the interests of the University, coming as this report does from Dr. Potts, it occurs to me that it would be subjected to the criticism that the University had launched itself upon a campaign to likewise shut the door of hope in the face of the young man, to its own profit and benefit. There is another thing in which I want to concur with my friend Moseley. I have been sitting here as a silent spectator and listener, and it seems to me that I have heard more rot, and more condemnation, or what the laymen and public at large will understand to be condemnation of lawyers than I have ever heard before in the same quantity of time. This Association ought to be representative of the legal profession, and speak for the legal profession in Texas, but if this method is to be maintained, it occurs to me that, while we are now representing only, or not more than, forty per cent of the lawyers of this State, the decimation will increase with such rapidity that it will not be a badge of honor and distinction to be a member of this Association.

DR. POTTS: Will the gentleman yield?

MR. MAYS: Yes, sir.

DR. POTTS: Is it the language of the report that is seriously objectionable?

MR. MAYS: Yes, sir; absolutely seriously objectionable. Not only that, but in combination with other language that I have heard emitted here at this Association—

THE PRESIDENT: The chair will rule that the discussion of any other language in connection with this report is out of order. The only matter before the house is this report. The report itself has not been read. I do not know what the language is. I have not heard it read.



MR. MAYS: I have heard it read, Mr. Lee. My language is germane. I know what is in it, so far as the matter I am now discussing.

DR. POTTS: The committee I represent will be glad to withdraw any objectionable language there.

MR. MAYS: That is all right, but I am leaving that now and going a step further. I represent, in part, a railroad corporation in this State, but this Association is not engaged in hearing evidence upon the trial of damage suits, nor chasing down ambulance chasers. We are here to sit impartially for the purpose of looking after the development of the law and the enhancement of the standing and integrity of the lawyers of Texas, and not to subserve any special interest in the enforcement of the law, nor in passing rules, nor creating courts. With that statement I want to state further, that up to 1905 there was absolutely no qualification of admission to the bar in this State. In the Twenty-eighth Legislature for the first time the question arose, and they undertook to make a provision to take an examination of candidates out of the hands of district judges and local committees. That proposition in the Twenty-eighth, Twenty-ninth and Thirtieth Legislatures was an active issue in the law-making power of this State. At one time the Legislature in dealing with this question revoked the force of a diploma from the University, and actually required University graduates to go before a board in Austin and stand an examination and get a license to practice law in this State. You had your central board then. It was confined to Austin. This proposition and the substitute of Judge Wright simply put in force a provision that we had in this State about twelve years ago, instituted at Austin. Now, the plan we have got is, that instead of making all these boys that could not go through the University and could not get a college education, travel to Austin at great expense, that sometimes they could not stand, a means of being admitted to the bar, was brought home to the boys all over the State, a thousand miles apart, in the Court of Civil Appeals of the district in which they live, before lawyers, under the appointment of a great and constitutional court of this State, to examine them. How? Under laws laid down by nine separate and distinct tribunals? Not much. Every board and every court in

the confines of this State examined every applicant to the bar under rules and on questions prescribed and laid down by the Supreme Court of this State. I object to shutting the door of hope to the young boy and the young man who has not the financial backing to get a college education, and to putting the hardship upon him of traveling 500 to 1000 miles to get admitted to the bar. It is wrong. It is wrong. It is not right, gentlemen. It is not democracy. I want to say that I do not concur in the proposition that it takes an educated man to make an honest man, for there are millions of honest people in this country who have not had the benefit of an education. I do not like that kind of stuff in a democracy, nor in the Texas Bar Association. That is what I wanted to say, gentlemen, and I thank you for the privilege of saying it. (Applause.)

MR. HARRISON: The idea that has come to my mind in listening to the very interesting argument is that much that has been said in opposition to the motion commends the report. We have spent a great deal of time here debating a matter which we did not understand. If I understand the recommendation that we are talking about, there is absolutely nothing in the report of the majority that is not covered by the substitute, and we have had a great deal of eloquence and a great deal of evidence—like we lawyers often do before a jury—utterly impertinent to any question before the body. I move that the debate be closed and that we vote on it.

MR. KIMBROUGH: Well, I want to say a word.

MR. HARRISON: I withdraw the motion.

MR. KIMBROUGH: I am not going to enter into the debate at all, but I want to say that I hope it has not been the purpose of any gentleman who has spoken on this question, or any other, to decry the advantages and benefits of an academic education. I do not think anybody has meant to do that. I do not mean to say that any line of cleavage should be drawn in the Association or in the profession between those who have had the benefits of an extensive academic education and those who have not. But I do say that we certainly ought to stand, all of us, at all times, for the highest standards, not only of professional integrity, not only of professional education and learning, but of gentle-

manly culture and refinement and all the highest standards and ideals of life. And I hope that, neither in the heat of debate nor otherwise, shall any of us permit ourselves to deprecate or decry these accessories to our profession. .

MR. HARRISON: I renew my motion.

THE PRESIDENT: The previous question is moved.

MR. MOSELEY: I would like to make a statement about the minority report.

THE PRESIDENT: If you confine yourself to a statement, all right.

MR. MOSELEY: The minority report simply recommends that the matter be left as it is at this time. In my minority report all I ask is that we do not adopt that long statement that contains the words to which I strenuously object, and by adopting the minority report you will simply leave the matter as it stands today.

THE PRESIDENT: The previous question is moved on the substitute.

The motion was duly seconded and carried.

THE PRESIDENT: The motion is on the substitute by Dr. Wright, which is adopted by the majority of the committee, that the third recommendation of the committee be adopted by this body.

The motion was carried.

THE PRESIDENT: The next business is the report of the committee on deceased members.

MR. DILLARD: Mr. President: For want of sufficient data your committee found it impracticable to prepare resolutions on several members who have died since the last report of the Committee on Deceased Members. As to these, it recommends that the committee to succeed the present committee obtain such data and present a report at the next meeting of the Association. Your committee has prepared memorial resolutions on the following deceased members: R. S. Neblett of Corsicana, T. D. Montrose of Greenville, Ray Hunter and James C. Scott of Fort Worth, Moritz Osterman Kopperl of Galveston, A. B. Storey

and Leroy G. Denman of San Antonio, William D. Williams of Austin, and Waller T. Burns of Houston.

As to these, your committee recommends that these memorial notices be spread on the permanent records of the Association. Believing that recommendation will be adopted, the committee deems it not wise at this hour to read these notices. It would only ask that each and all of us here in thought and in spirit plant at least one little white flower on the grave of each of those, our brethren, who have gone to the land lying beyond life's westernmost horizon. I move you that the recommendation of the committee be adopted.

MR. BRIGANCE: Mr. Chairman: I attended the last meeting of the Bar Association, and just previous to that time Lieutenant Governor Neal had died, and nothing was said about it at the meeting.

THE PRESIDENT: There was no report. The committee had not prepared a report at all, and they were to have gotten it up later and had it in the book, but they never furnished it.

MR. BRIGANCE: That looks to me like a very important matter that ought not to be overlooked.

MR. DILLARD: Will you pardon me one moment? The present committee has the names of several members—Judge Neal and Judge Seth Shepard—but we did not have sufficient data, and this report recommends that the next committee shall prepare resolutions as to all the others. We have prepared resolutions as to nine members. We wanted them to be reasonably full, and, therefore, did not prepare them as to the others.

THE PRESIDENT: Mr. Brigance, will you get the data as to Judge Neal and submit it to Mr. Connerly?

MR. BRIGANCE: I will.

MR. POLLARD: I second the adoption of Mr. Dillard's motion.

MR. MCCLENDON: I move that it be by rising vote.  
The motion was unanimously adopted by a rising vote.  
For report of Committee on Deceased Members, see page 337.

MR. ESTES: There is a paper here by Mr. Hart. I am going to ask that the Association direct that it be printed in the

Proceedings of the Association in the usual way. It is a long paper, and it is now too late to read it, I take it.

THE PRESIDENT: If there is no objection that course will be taken.

#### UNIFORMITY OF LEGISLATION.

(Paper of Hon. W. O. Hart, of the New Orleans Bar, read before the Texas Bar Association, at Wichita Falls, July 5, 1918.)

When the great Divorce Congress, which met in Washington, in February, 1906, adopted the following as its first resolution: "It is the sense of the Congress that no Federal divorce law is feasible, and that all efforts to secure the passage of a constitutional amendment--a necessary prerequisite--would be futile," the members thereof were of the unanimous opinion that uniformity of legislation could only be had through State action.

In adopting this resolution, they took a strong stand against the movement which from time to time arises in this country to ask Congress to do everything.

The forty-eight states of this great Union, each has its place in our system of government, and each has its duty to perform; and as, under the Constitution, "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," it should be the duty of each State to so frame its laws on general subjects common to the people of every State, so as to make them uniform, and that thereby the citizen of each State may, in the common, ordinary business concerns of every-day life, know what his rights are in every other State. It is the duty of every lawyer not only to help his clients whose interests are confided to him, to the best of his ability, but he has a higher duty to perform, a duty to the State, and that duty is to assist, as far as may be, in making the laws as simple as possible, so that all may understand them and all be placed on an equal footing thereunder. Every lawyer who loves his grand profession does all he can to keep his clients out of litigation in particular cases, and no lawyer worthy of the name would fail to do that which in a general way prevents or diminishes litigation, just as every physician does his best to prevent the origin and spread of disease.

The work of the National Conference of Commissioners on Uniform State Laws is a work which particularly appeals to the lawyer, who, above all other things, should strive for certainty in the law. There have been twenty-seven conferences of the Commissioners, the last at Saratoga Springs, in August, 1917. The twenty-eighth conference will be held in Cleveland, Ohio, in August, 1918. All the forty-eight States, the two Territories (Alaska and Hawaii), the District of Columbia, the Philippine Islands and Porto Rico, fifty-three jurisdictions in all--have delegates accredited to the conference, though I regret to

say that the delegates from two of the States (Kentucky and Oregon) have never appeared. From my own State commissioners were not appointed until 1903, but we have been represented, beginning that year, at every conference, by one, two or three commissioners, and personally, I have never missed a conference since my appointment that year.

The greatest work of the conference was the preparation and submission to the States of the Negotiable Instruments Law. This law was first adopted in the State of New York, in 1897, and it has now been adopted by forty-six States, and by Congress for the District of Columbia, in Alaska, Hawaii and the Philippine Islands; and it is the hope of the conference that at an early date it will be adopted in this State, Georgia and Porto Rico. It is a remarkable fact that, though the idea of the Negotiable Instruments Law was first suggested by the Alabama Bar Association, through Mr. Frederick G. Bromberg, now one of the Commissioners from that State and then chairman of the Committee on Correspondence of his Bar Association, on August 20, 1886, that State did not adopt it until 1909, and for the first time, in 1906, through the efforts of the present speaker, that State was represented in the conference. It required six years in Louisiana to have this law passed. Our General Assembly meets biennially, and on the first two occasions the law passed the Senate without difficulty, but failed in the House, under these particular circumstances: In 1900, a member from the Ninth Ward of the City of New Orleans, when the bill was read, threw up his hands in abject horror with these words: "What! Deprive a poor man of his three days of grace!"—not knowing or not thinking, perhaps, that the only one really benefited by the three days of grace was the banker, who got that much additional interest. But strange as it may seem, this argument had its effect and the act was rejected. In 1902, towards the close of the session, the member of the Senate who had charge of the bill, and who successfully carried it through that body, got out of touch with the "powers that be," and all of his bills were unceremoniously thrown aside in the House, and this was one of them.

In 1904, the chairman of our Commissioners on Uniform State Laws, the late Thomas J. Kernan, was the floor leader in the House, and through him the bill easily passed that body; but this time opposition was encountered in the Senate, though finally the bill was passed, and promptly approved by the Governor.

I am sure that the members of this Association, from their reading and study of cases in other jurisdictions are familiar with the Negotiable Instruments Law, and how this great and progressive State has failed, for over twenty years, to adopt it, seems to be almost beyond comprehension; and I certainly hope that at the next session of your General Assembly, it, if not all of the other uniform laws, may be adopted in this State. The provisions of the Negotiable Instruments Law are so clear and precise that any intelligent man

may easily understand them and follow the law without difficulty. As most of the business of the world is now done by means of negotiable instruments, uniformity in the law governing them is of the utmost importance, and to the lawyer of large practice, with clients scattered throughout the country, it is an indispensable help. How much more satisfactory is it to a lawyer, who is called upon by a client to know his rights as the holder of a piece of negotiable paper, which is made in another State, payable in a third, and where the parties reside, perhaps, in other States, to be able to turn to the Negotiable Instruments Law and answer the question immediately; but as to the States which have not adopted the Negotiable Instruments Law, the lawyer, before he may safely advise his client, must communicate with some lawyer in the State whose laws he is required to advise about. Strange as it may appear, opposition to the passage of the law was met with in many commercial States, such, for instance, as Maine, Indiana and Illinois, though upon what theory the opposition rested, it is hard to conceive; these States, however, adopted the law respectively in 1917, 1913 and 1907.

While I desire above all things to see the Negotiable Instruments Law the law of this entire country, I cannot subscribe to the suggestion of a former President of the Conference (Mr. Amasa M. Eaton, of Rhode Island, now deceased), in his annual address of 1906:

"Let Congress adopt our Negotiable Instruments Law as the law governing negotiable instruments arising in the Federal Courts or arising under interstate commerce," because I do not believe an act of Congress could be given any such effect.

To proceed with the work of the Conference: Another important law prepared by the Conference is the Uniform Warehouse Receipts Act, which I consider second in importance only to the Negotiable Instruments Law. Dealing in warehouse receipts is, as we all know, growing larger every day, and to States like yours (Texas) and mine (Louisiana), where our wealth is in agricultural products, the warehouse is as necessary to the realization of that wealth almost as the ground from which the wealth springs. The very moment that the law becomes certain and uniform as to warehouse receipts, that moment is an added value given to agricultural products. With the elements of risk eliminated or reduced to a minimum, higher prices will be paid than otherwise, and when a banker, no matter where he resides, may deal with a warehouse receipt, no matter where the warehouse is, with almost absolute certainty of the law, dealing will increase, there will be more competition, and prices will advance. The quantity of agricultural products raised and sold in the South and West is so great that almost the smallest fraction of increase in price brings enormous wealth, and that increase in price is sure to come with that confidence which certainty of rights and obligations brings. There are no radical changes from the general law in this warehouse receipts bill, nor were there any in the Nego-

tiable Instruments Bill. The draftsmen of each bill took the law as interpreted where there was no conflict, and where there was a conflict, followed the weight of authority, unless same seemed opposed to the best principles of substantive law. As we all know, a great part of the law on any given subject is jurisprudence, and the best jurisprudence has been enacted into positive law in these two bills.

Referring to the Negotiable Instruments Act, the Supreme Court of Massachusetts, in the case of *Union Trust Company vs. McGinty*, 212 Mass., 205, 98 N. E., 679, said:

"The design (of the Negotiable Instruments Act) was to obliterate State lines as to the law governing instrumentalities so vital to the conduct of interstate commerce as promissory notes and bills of exchange, to remove the confusion or uncertainty which arises from conflict of statutes or judicial decisions amongst the several States, and to make plain, certain and general the controlling rules of law. Diversity was to be molded in uniformity. . . . Simplicity and clearness are especially to be sought. The language of the act is to be construed with reference to the object to be attained. Its words are to be given their natural and common meaning, and the prevailing principles of statutory interpretation are to be employed. Care should be taken to adhere as closely as possible to the obvious meaning of the act, without resort to that which had theretofore been the law of this commonwealth, unless necessary to dissolve obscurity or doubt, especially in instances where there was a difference in the law in the different States."

This decision is particularly interesting because it was the first case in which the important question of uniformity of judicial decisions in construing the uniform laws was considered, the court on this point saying:

"In the interpretation of a statute widely adopted by the States to the end of securing uniformity in a department of commercial law, we should be inclined to give great weight to harmonious decisions of courts of other States, even if we were less clear than we are in this instance as to the soundness of our own conclusion."

This Uniform Warehouse Receipts Act has been adopted in all of the States except Arizona, Georgia, Indiana, Kentucky, Mississippi, New Hampshire, Oklahoma, South Carolina and Texas. It has been adopted in Alaska, in Congress for the District of Columbia and in the Philippine Islands.

It became the good fortune of a Louisiana lawyer, Mr. E. T. Merriek (my schoolmate of 1873-1874 and 1875), to present to the Supreme Court of the United States the first case involving the interpretation of any of the uniform laws prepared by the conference. The case is reported in 239 U. S., 520, 60 L. ed., 418, 36 Sup. Ct. Rep., 194, and is entitled "*Commercial National Bank vs. Canal-Louisiana Bank & T. Co.*," and was heard on appeal from the Circuit Court for



the Fifth Circuit, which had affirmed a judgment of the United States District Court, both courts sitting in New Orleans, and both having declined to give any effect to the provisions of the Uniform Warehouse Receipts Act, which was adopted in Louisiana in 1908.

The Supreme Court, through Mr. Justice Hughes, reversed the judgment appealed from and maintained the rights of the holder of the warehouse receipts under the law of Louisiana, and on the ground of uniformity, as will appear from the following part of the syllabus:

"That the act is to be so interpreted and construed as to effectuate its general purposes to make uniform the law of those States which enact it is a rule of construction that prevents the act from being regarded as an offshoot of local law to be construed in the light of decisions under former statutes of the enacting state, and requires the statute to be construed in the light of the cardinal principles of the act itself.

"The uniform acts relating to commercial affairs have been enacted in various States for the beneficent object of unifying so far as possible under our dual system of government the commercial law of the country, and to give effect, within prescribed limits, to the mercantile view of documents of title, and this principle should be recognized in construing the acts to the exclusion of any inconsistent doctrine previously obtaining in any of the enacting States."

This decision alone justifies all the work which the Conference of Commissioners has devoted to uniformity of legislation from 1892 to date, because it makes a warehouse receipt under the uniform law of the same legal effect in every State which has adopted the law; and considering the enormous dealings in merchandise by means of warehouse receipts, it seems to me that every State in the Union should now, without hesitancy, adopt the law.

The case just above quoted was followed by the Supreme Court of Louisiana, in the case of *Arbuthnot vs. Richheimer*, decided May 9, 1916, and reported in 139 La., 797, 72 So. Rep., 251, reversing the judgment of the trial court.

The first paragraph of the syllabus, prepared by the court, reads as follows:

"The Uniform Warehouse Act construed in uniformity with the views expressed by the Supreme Court of the United States in the case of *Commercial National Bank vs. Canal-Louisiana Bank & T. Co.*"

In connection with its public wharves, the City of New Orleans has constructed the most elaborate system of public warehouses possibly in the world, and if the decisions reversed by the Supreme Court of the United States, and by the Supreme Court of Louisiana, had been affirmed, the operations of these warehouses would have been greatly impeded and curtailed, if not entirely destroyed; because unless the receipts issued for goods in these warehouses carried with them complete and perfect negotiability, few owners of property would care to deposit their property therein.

I trust the members of this Association will carefully study these decisions, and I am sure after doing so, they will bend every effort to have the Uniform Warehouse Law adopted in Texas.

At the Conference of 1909, after several years discussion, the Uniform Bills of Lading Act was completed by the Conference and sent out to the States for adoption; a few months previous to this conference there was a great meeting in New York, called by the Committee on Commercial Law of the Conference, at which were represented through their attorneys, practically every great railroad system of the United States, and when was discussed from every standpoint the Uniform Bills of Lading Law then under consideration by the Conference; and when the committee completed its work the railroad attorneys expressed themselves satisfied therewith, and led the committee to believe that when sent out by the Conference it would be supported everywhere; the Conference completed its work the same year. At the time of the completion of this law, the jurisprudence of the Supreme Court of the United States, and many of the States, including Louisiana (but I am glad to say, not Texas), was that a railroad or other common carrier was not liable to the holder of a bill of lading acquired in good faith, without notice and for a valuable consideration, for the value of the goods represented by the bill of lading, unless the goods had actually been received by the carrier.

In other words, a distinction was made in favor of common carriers as to their responsibilities for the acts of their agents acting in the scope of their authority; a merchant gives to his clerk authority to sign promissory notes, but instructs him that he shall not sign or issue any unless the money is received therefor and placed to the credit of the merchant; the clerk, however, in bad faith and in violation of his instructions, executes notes and gives them to some of his friends as an accommodation and the friends negotiate them for value before maturity; certainly in such a case the merchant would be liable thereon, and why should not the common carrier also be liable under similar circumstances? This distinction was brought about through a decision of the Supreme Court of the United States, holding that a bill of lading was both a receipt and a contract, and that in so far as it was a receipt it could, like other receipts, be explained.

The uniform law, in Sec. 23, holds the carrier liable "if a bill of lading has been issued by a carrier, or, on his behalf, by an agent or employee, the scope of whose actual or apparent authority includes the issuing of bills of lading." In States where the law and jurisprudence coincided with the uniform law the railroads supported it but in other States, where the uniform law changed the existing law, they directly or indirectly opposed its adoption, though the law has been adopted in a good many States.

For many years since the adoption of this uniform law, the Com-

mittee on Commercial Law of the American Bar Association has been earnestly at work in the effort to have Congress adopt the uniform law so that its provisions would become a rule of practice in the Federal courts; and finally at the 1916 Session of Congress the law was adopted, but with several changes insisted upon by the railroad representatives, the effect of one of which was to nullify the provision above quoted, so far as large cities are concerned, in cases tried in the Federal courts, because there has been inserted in the Federal law, in the section above quoted, a provision that the authority of the agent must not only be to issue bills of lading, but to receive the goods; and we all know that, except in small places, the clerk who receives the goods is not the clerk to issue the bills of lading. I certainly hope that at an early date Congress may remedy this defect in the law.

The Bill of Lading Law has been adopted in twenty-one States, including my own, but the effect of the adoption by Congress of the provision above stated, which after all merely presents a rule of evidence for the Federal courts, will create two systems of jurisprudence in States which have adopted the law, or which, like Texas, hold the principle of law without adopting it, because the Federal courts, no matter what the State law may be, will give effect to the Federal statute, and, of course, the State courts will follow the State statute.

I remember many years ago, in my own office, there was the case of *Friedlander vs. Texas & Pacific Ry. Co.*, involving this question, which we brought in Texas, knowing the jurisprudence of Texas and hoping to get relief there, but the railway company promptly transferred the case to the Federal court, and we lost out in the Circuit Court and in the Supreme Court of the United States.

At the Conference, in 1903, Professor Ames, Dean of the Harvard Law School, volunteered to prepare, in course of time, a uniform law of partnership, and showed in a few words the great diversity of the laws relating to partnership in this country. I doubt if there are two States where the laws are similar; their wording may be alike, where there is any statute law on the subject, but the construction of same by the courts, or the interpretation of the common law as applied to partnerships, is nowhere alike. In such a chaotic state did the learned professor find the law that he announced to the Conference that he would not undertake to prepare a uniform law, unless it was the sense of the Conference that what he described as the mercantile idea of a partnership, as opposed to the legal idea, should be followed in the uniform law. That idea is given in *Bouvier* as follows:

"That a partnership is an entity, distinct from the partners, is the view of the business world everywhere, and such is the state of the law where the civil law is in force. In our law (meaning, of course, States which follow the common law) the partnership has not been

clearly recognized as an entity. In an action at law, at least, the partners alone are recognized as parties at interest, yet even at law certain doctrines are explained only by recognizing the firm as an entity. The courts of equity show more recognition of the true character of a partnership; but even in equity this has not been made clear until recently. There is now, however, a strong disposition on the part of the courts to recognize the mercantile doctrine."

A student of the law, or a lawyer just beginning practice, when confronted with this description of a partnership, would certainly conclude that what he thought was a very simple matter, was really of the greatest uncertainty. Louisiana, whose system of laws we lawyers of Louisiana believe the greatest and best the world has ever seen, has adopted as part of its civil law the mercantile idea of the partnership, for with us "a partnership is, in contemplation of law, a moral and civil being, distinct from the persons who compose it, and having particular rights and attributes."

The Conference, in accordance with the suggestion of Professor Ames, instructed him to prepare the uniform partnership act on the basis of the "entity" idea, and he did so, but before discussion of it was completed in the Conference, he passed away, and the work was entrusted to Professor William Draper Lewis, Dean of the Law School of Pennsylvania, and he induced the Conference to reverse its former action and adopt the aggregate idea, and the Uniform Partnership Law, finally completed by the Conference in 1914, is so drawn; this, in my humble judgment, is a backward step, and will prevent the law from ever being adopted in my State, and I believe in many others. It has so far been adopted in seven States and the Territory of Alaska.

The Conference of 1916 completed a uniform law of limited partnerships complementary to the Uniform Partnership Act adopted in 1914; but I think one provision thereof will prevent it from being adopted in many States, and that is the provision which provides that a man may be both a general partner and a limited partner in the same partnership at the same time. The Conference was very much divided on this question, but the majority approved the report of the committee containing the provision which is a very novel proposition, to say the least of it.

A very important Uniform Act was discussed in 1916 and 1917, and referred back to the committee, being a uniform law of conditional sales, but that, too, has a provision, which I think will destroy its popularity, and that is for a deficiency judgment where the vendor in a conditional sale elects to cancel the sale and receive back the property.

This law will come up again for final determination in 1918, and I hope this provision may be eliminated.

Another important act which the Committee on Commercial Law has under consideration, and which was prepared and partially con-

sidered last year, is a uniform law on the subject of fraudulent conveyances, which I believe, when completed this year, will be found to fill a long-felt want.

The Uniform Stock Transfer Act was completed by the Conference in 1909, and has now been adopted by thirteen States and the Territory of Alaska.

It seems to me that the campaign of education regarding this law has either not been so effective as it should be or, for some reason, has fallen on deaf ears, because the law is one which ought to be universal, for the trading in certificates of stock is next in volume of commerce to the trading in agricultural products, and certainty in the law regarding the rights of transferees and pledges of shares of stock is much to be desired. We adopted the law in Louisiana the first year it was completed by the Conference. Briefly, I might state that the effective provision of the law is that unless in accordance with the charter or by-laws of the corporation issuing the stock, some provision is printed on the certificate requiring notice to the corporation of a sale or pledge, or other restraint on negotiability, the sale or pledge is perfect by written transfer from the holder, without notice of any kind to the corporation.

During the discussion of the Uniform Stock Transfer Act in the Conference, the question was presented as to which would be the certificate entitled to recognition, a lost certificate, if it should afterwards turn up, or the certificate issued in lieu thereof, and no satisfactory conclusion was reached, but in the case of *State ex rel Louisiana State Bank vs. Bank of Baton Rouge*, 125 La., 138, 136 Am. Stat. Rep., 332, 51 So. Rep., 95, our Supreme Court solved the question in this language:

"The issuance by a corporation of a certificate for shares of its capital stock is a declaration to the world that the person named is the owner of the stock called for by the certificate; and a purchaser of the stock, who acquires it in good faith for value, and in the usual course of business, and to whom the certificate, properly indorsed, is delivered, is entitled to be recognized by the corporation as the owner of the stock and cannot be required, as a condition precedent to such recognition, to litigate his title with a third person, who claims under a certificate which had previously been surrendered and canceled; the question whether the cancellation and the issuance of the new certificate were authorized being one which the corporation and such third person must settle between themselves."

While it is true that in this case the question before the court involved a canceled certificate, the reasoning equally applies to a lost certificate.

Two Acts completed and recommended to the States in recent years by the Conference deserve consideration and adoption; they are: The Uniform Foreign Wills Act, of 1911, and the Uniform Probate

Act, of 1915; these two acts make valid in every State adopting them, a will valid where made or valid at the place of the testator's domicile, and recognize the probate of wills granted at the domicile of the testator. The first law has been adopted in ten States and in Alaska, and the other in four States.

I was very much surprised to learn a few years ago in a case placed in my hands and still pending, that in New York a will made at the domicile of the testator, and in accordance with the laws thereof, would not be recognized in New York unless made also in accordance with the laws of that State, except as to personal property; and a legatee under such a will in Louisiana stands the risk of losing a very large estate in New York unless, before the case is finally settled, New York adopts the Uniform Law; not that such adoption would have the effect of depriving anyone of rights acquired previous to the adoption, but because in this particular case, in the absence of legal heirs of the testator, the State would receive the property, and I do not think that a State would take property if, when the time comes to finally receive it, there is a law in existence which would give it to the one named by the deceased.

The National Divorce Congress of 1906, in which every State in the Union but two was represented, delegates also being present from the District of Columbia and from the Territory of New Mexico, prepared and recommended to the States a most elaborate law of divorce and annulment of marriage, and the same was approved by the Conference of Commissioners in 1907, but has been adopted in only three States—Delaware and New Jersey, in 1907, and Wisconsin, in 1909—considerably modified, except in New Jersey, and several times amended in Wisconsin. At the Conference of 1916, the Special Committee on Marriage and Divorce, of which Judge Andrew A. Bruce of the Supreme Court of North Dakota, is chairman, was advised by the Conference that it was competent for the committee to consider and report to the Conference amendments to this law, and if amended in the one particular hereafter referred to, I believe it will be adopted in many States.

The Supreme Court of the United States, in the case of *Haddock vs. Haddock*, 201 U. S., 562, 50 L. ed., 867, 26 Sup. Ct. Rep., 525, 5 Ann. Cas., 1, the majority opinion, concurred in by four other justices, being pronounced by Mr. Justice White of Louisiana (now Chief Justice), held in the strongest terms that one of the spouses could not acquire a domicile for the purpose of divorce, and this has been the law of Louisiana for over one hundred years. The Uniform Divorce Law, however, allows this to be done, by providing that either spouse may acquire a domicile, and at that domicile suit for divorce may be brought; so that there might be this condition of affairs—a husband brings suit against his wife for divorce in one State and she brings suit for a divorce against him in another State, when there would be a race of judicial process to see who could obtain judg-

ment first. At the meeting of the International Law Association, at Portsmouth in 1907, when the divorce question was under discussion, Mr. Walter George Smith, now President of the American Bar Association, who was chairman of the Committee of the Divorce Congress which prepared the law, was forced to admit that under the law as written, exactly what I have above outlined might happen, and in this provision is the weakness of the Uniform Divorce Law.

No law should be on the statute book which, in effect, would allow a husband to kiss his wife good-bye and then depart to be married in another State.

No State should have jurisdiction of a suit for divorce unless the cause of action arose therein, or the parties lived therein as man and wife, or unless the marriage was contracted there, where in cases as have sometimes unfortunately happened, the contracting parties separate at the altar; only in this way is there fairness to the defendant; because the spouse leaving the matrimonial domicile or the place of marriage would then know that at any time a suit might be brought for divorce in that State, and, therefore, he or she could not plead ignorance, as is the case where a new domicile is established by one of the spouses unknown to the other, simply as a preliminary to a divorce proceeding.

For many years the Conference has had under consideration a Uniform Incorporation Act, but, owing to the great diversity of opinion on this important subject, the law has not yet been completed, but the failure to complete it is entirely in line with the policy of the Conference, which is never to send an act out to the States until every possible objection thereto has been considered and reconsidered and, as far as possible, all conflicting views brought into harmony, so that the act when completed will represent the best thought on the subject as found in the decisions of the various courts of last resort.

Independently of commercial matters, the Conference has adopted three other laws of great interest to the people of this country and which, while probably never to be adopted as uniform laws, are of great assistance to other States as model laws in legislating on the important subjects represented thereby; these are: the Child Labor Law, completed in 1911, the Workingmen's Compensation Law, completed in 1914, and the Land Registration Law, completed in 1916.

The Torrens System of Land Registration is now the law in seventeen States (has this year been passed in the Senate of my State, and is now pending in the House of Representatives), all of which, except six, adopted it after 1904, when the subject was taken up by the Conference, and no doubt the publicity given thereto and the educational campaign conducted thereby have been the moving causes of the adoption of the law in most, if not all, of the States; and so it is, to some extent, regarding the Workingmen's Compensation Law and the Child Labor Law, for no doubt the action of the Legislatures

of many States was first called to these subjects through the work of the Conference.

Certainly the Federal Workingmen's Compensation Law and the law prohibiting the Transfer in Interstate Commerce of Products of Child Labor (which, I regret to say, has been declared unconstitutional through a five to four decision of the Supreme Court of the United States), had their origin entirely in the work of the Conference; and so it will be with the Torrens System of Land Registration, which Congress has now under consideration for the District of Columbia.

Mr. E. C. Massie, one of the Commissioners from Virginia and for many years chairman of the Committee of the Conference on the Torrens System and Registration of Land Titles, has recently written a history of the law, and all interested in the subject are advised to obtain a copy thereof.

The Federal Commission on Rural Credits, to whose work and reports is largely due the passage of the Act to Establish the Farm Loan Banks, in 1914, said in its report to the Senate: "Every student of the subject must conclude that the States should adopt some system of State guaranty of title as, for instance, the Torrens System. It is against the best interest of the general public to have possible legal disputes over the ownership of land."

And in the report made in February 15, 1916, by the Senate Committee on Banking and Currency, this appears:

"It is well understood that the laws in the several States vary as to land titles, registry, exemption, homestead rights, foreclosure, and equities of redemption. It is, therefore, made the duty of the farm loan board to investigate these questions in each State, and to declare mortgages ineligible as security for farm loan bonds in those States where the laws do not give adequate protection to those loaning on first mortgages. Very few, if any, States will fall within this rule, and they will doubtless amend their laws promptly in order to bring the benefits of the farm loan system within reach of their citizens." (Senate Calendar No. 135, Report No. 144, pp. 12-13.)

Mr. Massie crystallizes these two reports as follows: "In other words, the States are put on notice that they must adopt the Torrens System if they wish to bring the benefits of the farm loan system within reach of their citizens."

In 1915 the Conference created a new committee "On the Adoption of Approved Acts," the name of which, however, was in 1916 changed to the "Legislative Committee," and through its most untiring and active chairman, Mr. S. R. Child of Minnesota, it is bringing to the attention of the general assemblies of the different States the importance of adopting the uniform laws; and a special campaign will be conducted in each one of the States where the general assemblies meet next year, by this committee, and large results will no doubt flow from its work.



I must mention the work of one other committee, that on the "Uniformity of Judicial Decisions," of which Judge Henry Stockbridge, of the Supreme Court of Maryland, is chairman; this committee, by an elaborate system of card indexes, has placed at the disposal of every judge and lawyer of the United States every decision where any of the provisions of any of the uniform laws have been construed and so arranged by sections of the law that in a moment a reference to any decision can be furnished. I have had opportunity to use the work of this committee, and I understand that the judges of many courts of last resort have kept in touch with it so as to assist in reaching proper conclusions on what is now a recognized branch of the law.

The Library of Congress, at the suggestion of Mr. Child, has arranged for a department "On Uniform Laws," and with separate classifications and indexes has made it easy for any student of the subject to familiarize himself with all available literature on this subject. The Bar Association of Louisiana has created a similar department in its Law Library, and in time, I hope, all States will do likewise.

A movement is now under way in Canada to unify the laws of the different provinces, and to this work Mr. Charles T. Terry has given great assistance, and at the Conference of 1916 stated what had been done and what was contemplated in this regard.

Conferences have been held under the auspices of the United States Government regarding Uniform Commercial Laws for the twenty-one American Republics; and this work, if successful, will be the greatest help to business of all kinds in America.

Two conferences have been held at the Hague in the effort to prepare a uniform law of bills and notes for the entire world and though the European war has prevented the full fruition of this work, it is certain to be taken up in later years and carried to a successful termination.

The tentative law prepared by these conferences is based on the English Bills of Exchange Act and the Negotiable Instruments Law, prepared by the National Conference of Commissioners on Uniform State Laws, though in some respects, but not the most important, it follows neither.

The integrity of the States is the integrity of each State; with the disappearance of the States the Nation would soon cease to exist, and it should be the duty of every lover of his country to work within his State for that State, and for the laws of each State as far as necessary and feasible, to be uniform with the laws of every other State. The functions of the National Government should never be so exercised as to interfere with the domestic concerns of the States, and the States should not surrender, even tacitly, any part of their right to legislate for themselves and, through uniformity in legislation, indirectly for the citizens of other States, but should oppose

by every means in their power the encroachments of Federal legislation. It is easy to foresee that, in the minds of many of those now high in authority in this country, the one idea is a centralized government.

If these statesmen and publicists had their way, the States would be relegated to dependence for their laws upon the Federal Congress; and who is it that wants this centralized legislation? Who was it that for years have clamored in the halls of Congress for a National insurance law? Who was it, in defiance of the decisions of the Supreme Court of the United States, wanted a declaration from Congress that insurance was commerce? Did the people as a whole ask for such legislation? Did the States demand it or want it? No; it was the great insurance companies, led by the president of one of them, then a member of the Senate, who demanded this legislation. And why did they want it? Simply because it would be easier for them to comply with one law, when passed by Congress, than with the laws of the several States where they intended to do business. And who was it that wanted a National incorporation law? Has any considerable number of people asked for it? Or is it not simply the desire of the great corporations of the country? A fiction of law says that a corporation created by one State cannot do business in another, except as allowed by that State; but that principle, which I call a fiction, has been destroyed by the Federal courts ignoring State laws. Of course, corporations which do business in many States want to be relieved of State control, of State supervision and of State taxation. Are the States prepared to surrender their sovereign independence to the money power? If not, let them see to it that the encroachment of Federal legislation goes no further, and that uniformity of legislation is brought about by the acts of the States themselves. The decision of the Supreme Court of the United States, in the case of the Metropolitan Life Insurance Company of New York vs. the City of New Orleans and others, 205 U. S., p. 395, if not overruled in some form by Congressional interference, will do more to protect the States against foreign corporations and give to the States the rights to which they are entitled, than any case decided for many years. In that case, the insurance company was held liable for taxes upon promissory notes negotiated, signed and paid in Louisiana, but removed to New York by the company and only sent to Louisiana for collection. The effort of the insurance company to obtain protection of the Louisiana laws in negotiating its loans and collecting its notes and then avoid responsibility and pay no taxes thereon, was frowned upon by the Supreme Court, and the obligation of the company which obtained its protection from the laws of Louisiana, to pay taxes to Louisiana, was maintained and upheld. The large insurance companies would like such legislation from Congress as will relieve them from taxes to the States, and this power of taxation will be taken from the States if we ever have a Federal in-

insurance law or a Federal incorporation law. To the credit of Congress be it said that corporation influence never has been sufficient to have it pass a law declaring insurance to be commerce, after the Supreme Court of the United States, the greatest court in the world, had so often decided to the contrary. But we may not always have so conscientious a Congress, and it, therefore, behooves the States, through public sentiment, to take a stand against any such pernicious legislation.

What is known as the trust evil, is the greatest evil of the times, and the trust evil is a great evil, because the States, which create corporations and without whose encircling arm and protection a corporation can do no business, are deprived of control of corporations through the usurpation of the Federal courts. The words of Thomas Jefferson were prophetic, but the prophecy has been fulfilled:

"The judiciary of the United States is the subtle corps of sappers and miners, constantly working underground to mine the foundations of our confederated fabric. They are construing our Constitution from a co-ordination of a general and special government to a general and supreme one alone."

When I speak of the Federal Judiciary, I speak of the system and not of individual judges, because there is no judge within my acquaintance, either personally or through study, against whom individually a word may be said, though we of the South, in times past, could not always say this; but it is the system against which I speak particularly as applicable to what are euphemistically termed foreign corporations. Imperceptibly, and perhaps unintentionally, the fact is that the corporations believe they own the Federal courts, for I do not think in one case in a thousand, where the corporation is defendant, that is brought in the State court, does the corporation allow the case to be tried there, if it may be removed to the Federal courts. A corporation goes into a State other than that of its creation to do business; it receives for its officers, its agents and its property every protection from the State. The Federal government as such renders it none. It calls upon the State for police protection, and for protection through the criminal courts, and yet, when suit is brought against it to enforce one of its contracts or to respond to damages for wrongs committed, it immediately takes from the State, through its courts, the right to adjudicate the issues presented in the case; and to say that this is done because the State courts will not do justice to the corporation is a disgrace to the man who utters it. If the corporation feels it cannot get justice in the courts of a State, then it should stay out of that State and not do business therein; but any right to which the foreign corporation may be entitled under the Constitution and laws of the United States, which are paramount to any State law, no State can deprive it of, for the United States Supreme Court sits in Washington to prevent just such errors. Take the street railways of most of the cities, which are

now leased or owned by foreign corporations. Without the consent of the State where they do business they could not lay a foot of track or run a car for five minutes, and yet the corporation takes upon itself to say whether or not, when sued, it will allow the State courts to retain jurisdiction of the case or whether it will take the case to some other forum. State control and supervision over corporations can never be complete until the Federal courts are deprived of all jurisdiction over corporations, a jurisdiction which the Constitution does not give and which should have never been usurped.

To what extent does the judicial power of the United States extend? Section 2 of Article III of the Constitution says: "Between a State and citizens of another State, between citizens of different States, and between a State or the citizens thereof and foreign States, citizens or subjects"; and for the purpose of the present discussion, all we need to do is to determine what "citizen" means. Again referring to Bouvier we find:

"In American law alone, one who, under the Constitution and laws of the United States, has a right to vote for representatives in Congress and other public officers, and who is qualified to fill offices in the gift of the people."

Of course, if matters as now drifting are carried to their evident conclusion, a corporation may meet the definition of Bouvier, and we may have a corporation for Congressmen, Supreme Court Justice or President. But does anyone believe—can anyone conscientiously say—that the word "citizen," in the article of the Constitution just quoted, meant anything more than it said? It meant a person, a being made in the Divine image, and not a corporation which has no soul.

The great Marshall, the expounder of the Constitution, in the well-known case of *Bank of the United States vs. Deveaux*, 5 Cranch, 61, said: "A corporation aggregate cannot, in its corporate capacity, be a citizen." This is common sense and reason, and it is a great pity that it has ever been departed from. The corporation involved in that case was a corporation created by the laws of the United States, and yet the jurisdiction of the court was held to be determined by the citizenship of the members composing the corporation, and that the corporation itself was nothing with reference to the jurisdiction of the Federal courts. We note that in many of the affairs of the day the dollar is put above the man, and, by the United States courts taking jurisdiction over corporations as citizens, the thing is put above the individual. As to corporations, the court presumes that the incorporators are citizens of the State of the formation of the corporation, but as to partnerships the courts will not take jurisdiction unless every partner may sue or be sued in the Federal courts.

The dissenting opinion of Mr. Justice Daniel in the case of *Covington Drawbridge Co. vs. Shepard*, 20 Howard, 234, must commend itself to all. It is as follows:

"In dissenting from the court in this case it is not designed to reiterate objections which in several previous instances have been expressed. I will merely remark, with reference to the present decision and to others in this court, numerous, as they are said to have been, that they have wholly failed to bring conviction to my mind, that a *corporation* can be a *citizen*, or that the term *citizen* can be correctly understood in any other sense than that in which it was understood in common acceptation when the Constitution was adopted, and it is universally, by writers on government, explained without a single exception."

When we read this opinion, brief though it be, but every word breathing with logic, it is almost impossible to believe that the court could ever have held otherwise, and could have overruled, as it did in 2 Howard, 497, 16 Howard, 314, and 20 Howard, 227, the decision of Chief Justice Marshall in the *Deveaux* case. It is worthy of note that Marshall had ceased to be a member of the court before the overruling began.

In the case of *Ohio and Mississippi Railroad Company vs. Wheeler*, 1 Black, 286, the learned reporter, evidently from his legal education, not in sympathy with the ruling of the court, in the headnotes practically stated the law, as it ought to be: "A corporation is not a citizen within the meaning of the Constitution of the United States, and cannot maintain a suit in the courts of the United States against the citizens of a different State from that by which it was chartered, unless the persons who compose the corporation body are all citizens of that State." With this declaration of the law no one can find fault; but, of course, the presumption of citizenship in the corporation was brought into play, and the usurpation continued. It seems to me, however, that the Supreme Court is not satisfied with the present condition of affairs, and that only *stare decisis* stands in the way of a return to first principles, for in the case of *St. Louis and San Francisco Railway vs. James*, 161 U. S., 563, where the question before the court was as to the citizenship of a corporation created under the laws of two States, the court said:

"We are unwilling to sanction such an extension of a doctrine which, as heretofore established, went to the very verge of judicial power. That doctrine began, as we have seen, in the assumption that the State corporations were composed of citizens of the State which created them; but such assumption was one of fact, and was the subject of allegation and traverse, and thus the jurisdiction of the Federal courts might be defeated. Then after a long contest in this court, it was settled that the presumption of citizenship is one of law, not to be defeated by allegation or evidence to the contrary. There we are content to leave it."

When the Supreme Court of the United States takes occasion to describe a line of decisions which gave to the United States courts a certain jurisdiction by stating that the doctrine announced in the

decisions "went to the very verge of judicial power," it is very evident that the court knew that the doctrine was wrong, but did not have the courage to set it aside. But the time will come in the changed condition of affairs, brought about by a proper appreciation of the rights of the people, when the pernicious doctrine that a corporation is a citizen, for the purpose of giving jurisdiction to the Federal courts, will be annulled and set aside.

If corporations are citizens within the meaning of Section 2 of Article III of the Constitution, then they ought to be citizens under every other article of the Constitution; but the Supreme Court has not so held.

In *Paul vs. Virginia*, 8 Wall., 168, which a former president and many others desired to see reversed, the court held that corporations were not citizens within the meaning of Section 2, of Article IV, which says: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States"; and further recognized in that case that States had some rights, by holding that the privileges and immunities referred to meant those which a citizen received from other States, because he was a citizen of one State.

In an address delivered several years ago, an eminent ex-Senator said: "In my view, almost any evil can better be borne than the infliction of a grievous wound upon our constitutional system of government, which is dual in its character, combining the sovereignty of the Federal and separately of the State governments. Through a hundred years during which we have grown up a Nation of over 80,000,000 persons, all in all, the most powerful in the world, the Constitution has been adequate." That is pretty sound doctrine, of which we cannot have too much just about this time of efforts to stretch, ride rough-shod over and treat the Constitution as a dream of "back-date" and "has-been" statesmen.

But the quoted statement of the distinguished gentleman, unfortunately, did not accord with his actions while a National legislator; but, if he now sees in the proper light that the integrity of the States should not be entrenched upon, his conversion gives great hope for a similar improvement in others.

While I am not prepared to indorse by any means all the doctrines of William J. Bryan, yet what he said in an answer to ex-Senator Beveridge, is directly pertinent to this paper as to the Federal courts, and a brief extract may not be out of place:

"If he will review the history of the last twenty-five years, he will find that the very corporations which he now charges with being friendly with State rights have constantly defied the States and sought shelter in the Federal courts. Whenever a State has attempted the regulation of rates, the railroads have at once invoked the power of the Federal courts to enjoin and suspend. The United States courts are now filled with suits that ought to be tried in the State courts, but which are dragged into the Federal courts for two reasons—

first, to get them as far away from the plaintiffs as to make litigation expensive, and, second, to secure trial before judges who are appointed for life by Federal authorities, and often upon the recommendation of corporate representatives."

Deprive the Federal courts of jurisdiction over corporations, and the trust question will regulate itself. In the very nature of things uniformity of legislation will follow, but it will be uniform legislation by the States, each acting for itself and with a just regard for the rights of all.

It is almost an insult to a sovereign State for a corporation to claim that it cannot get justice in civil matters in the courts of the States when, without the protection of the State, its property would be at the mercy of evildoers.

I do not propose to argue the question whether this country is a Nation with a big "N," or whether it is a confederation of States; but that the States created the Constitution, that the States adopted it, and that the States keep it alive, is apparent throughout that great instrument.

I know the argument of many has been that, because the preamble of the Constitution begins with "We, the people of the United States," that, therefore, the Constitution is the work of the people in their individual capacities as a whole and not as States; but this argument is unsound and cannot bear the test of analysis. We all know that the preamble is no part of a law, and while "in the interpretation of a statute, though resort may be had to the preamble, it cannot limit or control the express provisions of the statute."

The Constitution was adopted not by the delegates representing the people, but "by the unanimous consent of the States present," and we all know that the ratification of nine States was necessary for the establishment of this government.

So essentially is the Constitution the act of the States that it cannot be amended except by the States. Of the one hundred millions of persons in this country, supposing that every one were a voter, the unanimous vote could not change a letter or syllable of the Constitution, while the action of the States might reach a condition that the vote of one legislator might be sufficient to change the Constitution, and this because that legislator's vote determined the vote of his State.

Let us strive, through uniformity of laws, to strengthen the power of the States, and no law can lay any claims to uniformity, even in a single State, with the present jurisdiction of the Federal courts as to corporations.

We have one kind of justice for those who may go in the Federal courts—usually corporations—and another kind for those who must remain in the State courts. The United States Supreme Court, the bulwark of the people's liberties, will never rise to its greatest height until it returns to the doctrine of Chief Justice Marshall, and holds

that corporations, as such, are not within the jurisdiction of the Federal courts.

Restore to the States that absolute control over corporations, which they should have because corporations are creatures of State law, just as inheritance laws must be administered by the State courts, and we shall soon need no "trust busters," no national corporation laws, and no efforts by acts of Congress to overrule the courts; but we shall have orderly, legal and just control of corporations, with the Supreme Court of the United States to protect them, should the State courts infringe such rights as they may have legally under the Constitution; and when the States have the proper control over corporations uniformity of legislation will follow, so that a railroad running through many States, or other corporations doing business in many States, shall receive equal protection in all of them, and the rights of the people will be protected as well as the so-called rights of corporations.

One of the candidates for governor in my State, in 1907, in his address to the people, so forcibly and in few words sets forth how we should reserve the rights of our States that with his permission I quote two paragraphs therefrom:

"I believe that the safety of our political institutions and the perpetuity of our splendid principles of popular government are bound up in the integrity of the State. The State is the unit in the governmental system; hence the weakening of the fundamental unit means the sapping of the foundation upon which popular government rests.

"Therefore, wise and far-seeing statesmanship demands that the growing tendency to abandon these principles, manifested by men who have become weary of the long and thankless task of guarding this bulwark of the people's rights, should be firmly resisted. The usurpation on the part of the Federal government of the powers reserved to the State on the one hand, and, on the other the tendency of weaklings in official positions in the States to surrender to the Federal government the rights appertaining to the State are equally menacing to the general welfare."

I love my country, as I am sure does every one before me; I glory in its greatness, know that it is greater today than it was yesterday, and will be still greater tomorrow; but I love my State, my native State, and I want that State and every other State to occupy the position which the framers of the government intended they should occupy.

And to turn over the control of the States to corporations, foreign corporations as they are called—tramp corporations as many of them are—must never be done; but unless a stop is put to Federal legislation and the jurisdiction of the Federal courts over corporations, the States will soon exist in name only.

But we need not despair; the time will come when the important



principles of constitutional government, which now lie dormant, will rise again and, in the grand words of Lincoln: "Let us have faith that right makes might, and in that faith let us do our duty as we understand it."

THE PRESIDENT: I now declare the election of officers for the ensuing year in order.

MR. ALLAN D. SANFORD: Mr. President: It is a privilege, gentlemen, to present the name of any man to this Association for the office of President. It is an added pleasure to that privilege when the man who is to be named is one of the highest order, and a lawyer of the first class. It is still an additional pleasure when that man is a lovable fellow. Cecil Smith possesses all these qualities. I am especially glad to present the name of Hon. Cecil Smith of Sherman for the office of President of the Association. (Applause.)

MR. MOSELEY: I second the nomination and move that nominations be closed and Mr. Smith elected by acclamation.

The motion was seconded and unanimously adopted.

THE PRESIDENT: Will Mr. Sanford and Mr. Barwise accompany the handsomest member of the Texas Bar Association to the chair? (Applause.) Gentlemen of the Association, the Honorable Cecil Smith, wholly unknown to you. (Laughter and applause.)

MR. SMITH: Gentlemen of the Association: The time is too short and my vocabulary too limited to express my appreciation of the honor you have conferred. I thank you. The next order of business is the election of a Vice-President.

MR. DILLARD: Mr. Chairman and Gentlemen: Labor faithfully done, duty conscientiously performed, does not always receive, but it ought always to receive, its merited reward. The chairman of our Board of Directors has done his labor well, accomplished his duties efficiently. I am sure that this Association will be glad to elect him to that higher office. I nominate as Vice-President of this Association Hon. Lee Estes of Texarkana. (Applause.)

MR. MOSELEY: I second the nomination, and move that nominations close and that Mr. Estes be elected by acclamation.

The motion was seconded and unanimously adopted.

MR. ESTES: Gentlemen: I appreciate this honor very highly, and assure you I will do my very best to serve you acceptably. (Applause.)

THE PRESIDENT: (Mr. Smith in the chair): The next order of business is the election of the Board of Directors:

MR. BARWISE: Mr. President: I nominate the following capable Board of Directors: Claude Pollard, chairman, of Houston; Richard Mays of Corsicana, W. C. Wear of Hillsboro, W. A. Wright of San Angelo, and A. H. Britain of Wichita Falls.

MR. MOSELEY: I second the nomination, and move that nominations be closed and they be elected by acclamation.

The motion was seconded and unanimously carried.

MR. ESTES: I nominate as Treasurer the man who has served us efficiently heretofore, and on whom I think we can impose again, Mr. Henry Evans of Bonham.

On motion of Mr. Moseley, duly seconded, Mr. Evans was unanimously elected by acclamation.

On motion of Mr. Germany, duly seconded, Mr. F. T. Connerly of Austin was unanimously elected Secretary.

THE PRESIDENT: I know of no further business.

MR. SANFORD: You will remember that on yesterday our Secretary was directed to send a telegram of sympathy to our brother member and ex-President, Mr. John L. Dyer of El Paso. The Secretary performed that duty last night, and today we have a response which I am requested to read. It is really a love letter, gentlemen, like old John always does:

“El Paso, Texas, July 5, 1918.

“F. T. Connerly, Secretary Texas Bar Association,

“Wichita Falls, Texas:

“Please convey to the Association my deep appreciation of resolution adopted by them and telegram sent to me advising me thereof. It was a bitter disappointment to me that I could

not attend the meeting, the first I have missed in many years. I so wanted to attend, so I could enjoy the meeting and be with my friends, but it is good to know that in my illness I am remembered by them. Am slowly improving, and hope within a month I may be up and about. Have passed all danger. It is now just a case of slow improvement. The Association will never know how deeply I appreciated being advised about resolution adopted by them. I shall watch the papers with eagerness to read proceedings of the meeting. Hope it has been a splendid meeting, and that all have enjoyed themselves to the utmost. Sincerely,

"JOHN L. DYER."

Mr. President, I suggest that without a motion this be spread upon the minutes of the meeting.

THE PRESIDENT: It will be so ordered, if there is no objection.

MR. SANFORD: Now, one other matter before we close. In 1898, in the Democratic convention held at Galveston in that year, I sat under the spell of that remarkable speech, made by that wonderful humorist and splendid lawyer and judge, Judge R. W. Hall, commonly known as "Brick" Hall, nominating Mr. Robbins for State Treasurer. I then heard from him the first description that I had ever heard of Western Texas, and it ran like this:

"It's a country where the sage grass and cactus grow,  
Where the wind never ceases to blow,  
And the sand is always on the go.  
Where the prairie dog kneels  
On the back of his heels,  
And fervently prays for rain."

When this Association met in San Angelo seven or eight years ago, I learned that "Brick" Hall's description of Western Texas was not true; that Western Texas is really a land flowing with milk and honey.

MR. WRIGHT: It seemed to me it was flowing mostly with champagne. (Laughter.)

MR. SANFORD: That is the reason it looked like milk and honey to us. (Laughter.) Since we have been in Wichita Falls we have learned that the impression we obtained at San Angelo fits the case of every Western Texas city, with the exception only that the old cow that now gives the milk in this country has got no kick. (Laughter and applause.) All of us have enjoyed being in Wichita Falls. I do not know that I have ever experienced a more genuine, cordial, open-handed hospitality. The citizens, wherever we meet them, look like they are glad to see us—the first time I ever saw a citizen look like he was glad to see a lawyer. The lawyers resident have busied themselves to make us feel at home. Every time one of us gets up here to move about one of the resident members, if he is seated, gets up and offers him his seat. I never saw more generous hospitality. I move a vote of thanks to the people and the bar of Wichita Falls for their kindness to us.

The motion was seconded and unanimously carried by a rising vote.

MR. DILLARD: Mr. Chairman: I move you, sir, that the thanks of this Association be tendered to Dr. Roscoe Pound for having accepted our invitation to be with us, for his able and thoughtful addresses—better yet, for his good fellowship—and that the sentiments of this Association be expressed to him in the words of the East Tennessee poet:

“It’s hard for we’uns from you’uns to part,  
For you’uns have won we’uns’ heart.” (Applause.)

The motion was seconded and unanimously carried by a rising vote.

JUDGE WEAR: I move that we tender the ladies of this town our thanks for the magnificent luncheon the members of this Association were furnished by them yesterday.

The motion was seconded and unanimously carried by a rising vote.

JUDGE DUNCAN: I move that we express our thanks to the local as well as the State papers for the reports they have made of our proceedings.

The motion was seconded and unanimously carried.

MR. KIMBROUGH: We began this session with some expression of our patriotism, and I want to close it by offering a patriotic resolution:

"Resolved, By the Texas Bar Association, that, standing in the midst of a great war, which is to determine whether democracy or autocracy is to rule the world, we declare our unshaken belief in the strength and sufficiency of democratic principles and institutions, as exemplified in our own glorious history, to give the human race stability of government, security to property, protection to life and liberty, and opportunity to realize its highest aims and ideals.

"Resolved, further, That we pledge to our country unswerving devotion to her service, and every possible sacrifice, to carry our common flag to a glorious victory, which shall be to all nations, and to the exaltation of the rights of man everywhere upon the earth."

I move the adoption of these resolutions.

The motion was seconded and unanimously carried by a rising vote.

Thereupon the business session of the convention adjourned sine die.

#### BANQUET, WICHITA FALLS, TEXAS, JULY 5, 1918.

THE TOASTMASTER: After this magnificent repast, closing all the splendid entertainment that the people of Wichita Falls have afforded the Texas Bar Association, we come to the last chapter in the meeting, the responses to toasts. Years ago, in search of a stenographer, I went to the general manager of our road, who had a young man working for him, and told him that I thought we had a little better job than the general manager was giving him, and asked him if it would be satisfactory to him for us to tender him the job. The general manager said: "Oh, yes, that is all right. I am glad to see him make some more money, if he can, but I want to tell you this about him—" the young man has since become the general manager of a railroad, and this characteristic may have accounted for it—"I want to tell you this about him: If there is anything over in your office that you don't want him to find out about, you had better tell him about it as soon as he gets over there." Just

to keep you from finding out about it, I will tell you in advance that this role of toastmaster is a new one. I say that now, because it will not be necessary to say it later.

On my right is a gentleman whom we have brought all the way from Harvard to tell us about practice and procedure and reform of courts, not that we thought he knew any more than we did, but just because it was the routine to do that kind of thing. We listened to him yesterday morning, and we listened to him again today, and we found out that our preconceived notion was altogether wrong. He did know a whole lot more about it than we had any idea that anybody knew. (Applause.) But I want to say to him that, as much study as he has put upon the question of simplified procedure, and as much learning as he has accumulated about it, as Texas is never to be surpassed, we still go him one better down here. He has met three members of the Supreme Court. Two of them having gotten away and there being only one here left, I can be a little bit more free with the situation than I otherwise might be. Really, the most important member of the Court, the one that has been there longest, and the one that, on the quiet, the lawyers think knows more about it than any of the balance, did not come. The people of Wichita Falls did not extend him an invitation. What his last name is, I do not know. His first name is Alex, and all of the bar of the State of Texas who have ever practiced in the Supreme Court have come to know Alex. (Applause.) And now, as to the matter of practice: Nine Courts of Civil Appeals have been accumulating records. The cases have been piled up on the Supreme Court, and it was necessary that something should be done. Now, if these people from up in Massachusetts and Harvard University, who think the learning of the world is at their feet, think they can show us something, they are simply mistaken. Our Supreme Court has evolved a simplified method of procedure. Judge Phillips gets Judge Hawkins and Judge Greenwood in the room, and they press the button, and Alex comes into the room. Judge Phillips says: "Alex, many applications for writs of error out there?" "Yes, sah, Jedge, a good many." "What are they, Alex, big ones or little ones?" "A good many big ones, Jedge." "Well, Alex, you go out there and mark all the big ones 'Refused,' and you bring us just a few of the little ones." (Laughter.)

Over to my left sits a gentleman on whom I generously this afternoon bestowed my mantle. I don't know—I stop and look upon him, and I wonder whether I ought to or not. It is many, many years ago since I first met him. I was a young, struggling lawyer, and I drifted over into Delta county, where I was familiar with the whole situation, and a stranger came into town while court was in session. I was young and unsophisticated, and easy to approach and talk to, and the stranger came up to me and said: "Mister, who is that fellow sitting inside the bar there?" I said, "That is Mr. Cecil Smith of Sherman," He said: "Well, if I had a face on me like that, I would not practice law in the courts of the country." (Laughter.) That is not all he has got. He is capable of most magnificent physical efforts. I have his word for it. On our Supreme Bench a few years ago sat those two old men that we all loved, Judge Gaines and Judge Brown, and they had been listening to the soft tones of lawyers' voices for so many years that the music—I started to say had ceased to soothe. No; it had come to soothe, and they would doze off into a gentle and kindly sleep, while the lawyers talked. Mr. Smith said to me: "Do you know, I didn't like to be treated that way. The Lord didn't give me a voice for nothing, and as I started out in my speech, the first thing I knew Judge Gaines nodded, and then Judge Brown dozed off, and I lifted my voice until that old Capitol began to sing, and Judge Gaines raised up, and Judge Brown raised up, and I kept going at that pitch for about five minutes, until they got good awake, and then I would drop down again."

All of you have not been in the habit of attending bar banquets. If you had been, it would not be necessary for me to tell you what I am going to tell you now. You can go back through the annals, and they will bear me out. Mr. Smith is always on the toast list. Running out of subjects the last time, he had himself put on the toast list to respond to "I, Myself," and he got further along this year, and he will tell you about "Something." (Applause.)

## SOMETHING.

RESPONSE TO TOAST BY MR. CECIL H. SMITH.

*Mr. Toastmaster, Ladies and Gentlemen:*

I do not know whether to apologize for myself or my subject. I have served on program committees myself, and I know what this committee was up against. They hadn't an idea in the world, and they had to furnish topics for the speakers at the annual banquet, and if you will listen at this program, you will understand my meaning. Last year the program committee back-fired on me at Houston, and I had to take charge of the banquet program, and I have to confess that I have never been very proud of that program, but I now feel a little better about it.

"Something." I asked my wife what she could make out of that subject, and she said: "Well, it looks to me like you have been talking about nothing, and they just stipulated this time that you talk about something." (Laughter.) That did not help much. It is enough to make a man disbelieve this whole wireless theory. All the way from home to Wichita Falls I was sending out these S.O.S. signals for help, and was prepared to intercept any idea that was winging its way to this Association, but either the lawyers are in my fix or else there is a whole lot of hoarding going on in the country. (Laughter.) Now, finally, I just concluded that I would ask for exemption on the ground of blooming idiocy. When I tell you that I am chairman of a local exemption board over in my country, I am father confessor to the district board of the eastern district, I am Federal inspector of the selective service regulations for a large portion of this great State, I am sort of a wet nurse for the families of the exempted men "enduring of the war," I think you will grant my appeal.

Now, I am glad the election took place this afternoon, before it became necessary for me to expose my condition. I am like the gentleman who never lifted his hand excepting to feed himself. I cannot raise my voice except in answer to questions. Every conceivable question, from conception to birth, and from birth to dissolution, is continually fired at me for the purpose of getting exemption, and these questions are fired at me in my official capacity, and I am supposed to answer ex cathedra. Why, the neighbor women call me up in the dead hours of the night to know about the stars on their service flag. The most intimate details of married life are communicated and confided to me over the phone, in the hope of securing exemption, but I always make them come across with affidavits. (Laughter.) Now, I have ascertained from my experience that two things are absolutely essential in the exemption boards: One is a weak sense of sympathy, the other a strong sense of humor (laughter), and there is ample opportunity for the cultivation of both. (Laughter.) I might tell you a good many amusing incidents that have come within



my experience, tending to show that men of all classes are about of a whatness. But that is not my subject. My subject is "Something," and, ladies and gentlemen, am forced and compelled to tell you that on that subject I can say nothing, nothing at all. I thank you. (Laughter.)

THE TOASTMASTER: Over in my town, the eastern suburbs of Wichita Falls, they put me in charge awhile back of the speakers' committee for the Red Cross, and the various people over the county, particularly the good women, who had been working in the country precincts for the Red Cross, were advised that when they wanted a speaker they could call me by phone, and I had a list of available speakers, and I would furnish one. The telephone would ring: "Is this Mr. Lee?" "Yes, ma'am." "Are you furnishing Red Cross speakers?" "Yes, ma'am." "Well, we want a speaker out at Birdville." "Well, ma'am, I will send you a speaker." "Well, whom will you send, Mr. Lee?" "I will send Judge So-and-So." "But, Mr. Lee, can't you send Fritz Lanham?" I would explain to her that Mr. Fritz Lanham was the mainstay of the County Attorney's office, and had so many engagements, and was so popular that he could not be gotten right then. And then the phone would ring again, and out at Rock Creek schoolhouse a lady wanted a speaker, and I told her I would send one, and she would say: "Well, who, Mr. Lee? Can't you send Fritz Lanham?" Until finally, with almost inexhaustible patience, all mine became exhausted, and I said to one good woman: "My dear madam, I hope you will understand that the Lord never made but one Fritz Lanham." Just why He did make but one, I do not know; whether He spent all His energies in the effort, or did not like the job and quit, I cannot tell you. This pride of Tarrant County will talk to you about "Camouflage," and he is a pastmaster at it. (Applause.) There is a little girl running around this room tonight—she was back of me a minute ago—who sat at his feet and watched him pull half dollars out of his knees and stick them in her shoe, and then pull them out of the hem of her dress, and she would turn that dress up and look for the hole, and ask her father how it happened. If he cannot tell you about "Camouflage" I do not know who can. (Applause.)

## CAMOUFLAGE.

RESPONSE TO TOAST BY HON. FRITZ G. LANHAM.

*Mr. Toastmaster, Our Distinguished Guests, Ladies and Gentlemen:*

In order that the time which I shall consume may pass pleasantly for myself, though painfully for you, will you please pardon me if I do not attempt to remove the camouflage of this poorly deserved praise from our retiring president? My remarks will make it very evident why I was so desired in the rural sections. (Laughter.)

An old adage has it that half the world does not *know* how the other half lives, but half the world *believes it knows* how *all* the lawyers live. It believes they live by gabbing, by grabbing, by grafting. We sit at this board with one accord and satisfaction, with the gilt-edge security of our own estimates of our importance to make us contented with the stock we take in life. But, as Burns once said, in a truth that sometimes burns:

"O wad some Power the giftie gie us  
To see oursels as ithers see us!"

The public frequently spells all the gilt-edge things about us g-u-i-l-t. It often thinks that the pictures we present of ourselves to society should be labeled: "The board of censors passed by;" that we are carrying out many principles—that ought to be left in. Oh, a faithful few regard the lawyer as a paragon—that is an impression we find some under, *moreover*,—but there are still in the land many eager to believe that he delights to graze on the long green in ethically forbidden pastures.

These critics constitute the jury constantly passing upon us professionally. And it seems they have authority so to pass, for most of us have learned by this time that the verdict is the same thing as the jury's diction. This is a serious matter, one we ought to think about and talk about here in executive session while so many of us are together,—for the truth that there is safety in numbers is fully attested by the fact that we always find a combination on a bank vault. Under the scrutinizing peers of this jury, we have before us this election of remedies: Either we must remove the beam from the eye of the public and convince it that in its vision of us it has exercised a great deal of optic nerve, or, else, if there be a modicum of fact in its censure, we must cast off any camouflage under which our profession now masquerades, until the truth stands forth,—that is about where it usually stands; it is seldom as good as one, two, three,—until, I say, the truth stands forth clad only in such scant garments as the law absolutely requires.

Of course, you and I know, for example, that the attorneys who habitually infest police headquarters in our larger cities do so be-

cause they like to see the guilty brought to jail, even though the journey might entail some slight emolument to them; that their presence is an ocular demonstration of the lively interest they take in zealous police activity; that in the ethics of the profession they are really as true as the German to the Pole; and that barratry is a thing as far from their minds as their cerebella themselves. We know these things, I repeat. But the people! They are prone to misunderstand this superlative indication of interest. With their usual lack of appreciation of the motives which prompt these men, they are tempted to think that the lawyer who remains at his own fireside when the shades of evening have been pulled down is being discriminated against; that he is appealed to only as a last resort, after a full consultation of these attending Doctors of Laws at the City Hall has determined the patient to be one that properly belongs to the charity ward. For this faulty public vision we should gladly recommend a good optician, but for the fact that there is and has been nothing in glasses since the zone law went into effect.

Now we often hear, also, what I think I may be safe in denominating *positive censure* of a class of *solicitors* commonly known as ambulance-chasers. The people find it difficult to interpret their acts in the broad, unselfish light of service for the general welfare, in which our profession so likes to bask. They are inclined to believe that when this class talks of liability it means its ability to lie, and that injured mortals often employ members of it merely because it is quite customary for lame ducks to follow a quack. The public does not seem to realize that an accident victim *should* be asked, in a spirit of humanity, if he wishes to recover; that he should be informed that the car that struck him broke the law, as well as his limb,—in which respect that member became, for the time, a limb of the law; that he should be told of his rights and that, despite the fracture, he is in proper condition and position to fight the company. The public fails to bear in mind that some people come to terms and others have terms come to them, both on the civil and criminal sides of the docket, and that it is quite in keeping with the times for some counsellor to act as first aid to the insured. Many of the laity do not seem to grasp the idea that confidence is now a matter of consideration only for the greenhorn, who comes to town lugging a telescope that *he* can't see through, but the bunco-steerer can. Gentlemen, we must not permit the improper parading before the critics of some of our clan simply because they think self-possession is nine points of law practice, and possession of the client's purse the other point. When I have concluded, the Chair will be glad to hear from volunteers to serve on the committee to advise the public of the great injustice it is thus doing a part of our profession.

Most of the politicians are recruited from our ranks. I think we may frankly admit that there is a bit of camouflage about politics, and endeavor among ourselves to correct such slight evils as may

exist. It is interesting to observe the politician of today, itching for a place but with no desire to be scratched, going about looking for visible means of support, and singing to the public a little political song of his own decomposition. He says so much, and yet says nothing. If the doctors ever want to try out any new infectious or contagious disease in this country, they ought, in a spirit of "safety first," to test it on the politicians, because they are so non-committal they never give us anything, anyway, until we have had it already long enough to be over it. Take this 'matter of woman's suffrage, for instance,—not that it is a disease at all—far from it. Let us hope it's a cure. A year ago we couldn't get any politician to tell us unequivocally how he stood on the question—or whether he was standing or lying,—but, now that a bumper crop of feminine voters is upon us, every pie-hunting one of them would have us believe that he has always openly favored and advocated it, and he will point with pride to the time long ago when he addressed the deaf mutes at Austin on the subject or spoke to the colored insane about it. If we are not thoroughly convinced by this, he will aver, further, that in the dim and distant past he wrote a letter about the matter to some dim and distant cousin, who is either physically or politically dead and can't deny it. But until woman's suffrage was a settled question that letter was as silent as the T(ea) in Japan. Isn't it strange that we never can find these politicians guilty of being accessories *before* the fact? It's always *after*. If the camouflage were removed from some of our political big guns, we should find them even of greater *bore* than we now think them.

Criticism of our courts is not so universal as a popular pastime. Of course, we do not attribute this to the fact that courts have authority to punish for contempt, but, rather, to the possible belief of the citizens that courts are alert to public opinion, and that, in an adaptation of that same political camouflage, they can readily find a line of reasoning or a reason for lying whereby they are transformed by the renewing of their minds that they may approve what is that good and acceptable and perfect will of the people.

I think I shall mention the saloons—*in closing*. In the sweep of an apparently universal sentiment, we are all, to the world, prohibitionists now, but I fear some are such only in a Pickwickian sense. Are there not, in fact, those among us who, in a spirit of loyal aversion to seeking a place in the sun, are secretly reveling in the moonshine? How many are like the old mountaineer: with all his faults he loves his still? And we may say, in passing, that hell has no terrors for him, because he longs for a place where the worm dieth not and the fire is not quenched. But is it possible that every little wave of prohibition has its nightcap of camouflage on? Unfortunately, it seems true. Just note the dry grins here that attest it. The bravery of the Highlander has inspired many a man to like a little Scotch in his make-up. And tonight, though most of us are one hundred per cent

pure in our public prohibition professions, there are likely some present and some absent whose opinions are fittingly expressed by this final paraphrase:

Sunset and evening star,  
And then, 9:30 comes;  
But now it has no meaning for the bar,  
Nor for the bums.

Wines light and evening beer  
And spirits flown afar;  
For barristers and bar roosters, a tear,—  
They've double-crossed the bar.

THE TOASTMASTER: I have been presented in my short life with many questions that were hard to understand, situations that were hard to analyze or find a reason for, but when I found Joe Barwise on a toast list it was a corker. I have been trying to find a reason why or how it happened, and at last there came back to me a story that Judge Glass has been telling around town during the last few days. Some of you here may have heard it, but I think most have not, and it fits the occasion just right. Casey is a very faithful employee of the T. & P. He has been loyal for many years and expected to live and die with the T. & P. Then came the war and government control, and since then Casey's mind has been unsettled. What was going to happen, or where he was going to land, or what was going to become of him and the railroad, and those things which made his life and were his life, Casey knew not, and Casey has thought nothing and talked nothing but government control. McCarthy, his closest friend, also is a one-ideal man, but he is a great admirer of Father Kerwin, and his one thought, and his one hope and his one aspiration is that Father Kerwin shall succeed Bishop Gallagher, when Bishop Gallagher passes to his reward, as bishop. McCarthy approached Casey and said: "Casey, now, really, don't you think that Father Kerwin is the very man for bishop to succeed Bishop Gallagher?" Well, I don't know. If times were normal, if it was not for the war, that might be so, McCarthy, but you know the railroads are in the hands of the government, and you cannot tell, McCarthy. You don't know." "But now, Casey, really, if Bishop Gallagher were to die, don't you feel sure that Father Kerwin would

be appointed?" "Well, McCarthy, I think so, if times were normal, but everything is so upset, so turned upside down, the railroads in the hands of the government, why, you don't know, McCarthy, Mr. McAdoo might appoint a Protestant." (Laughter.) I cannot understand it. It must be because the railroads are in the hands of the government. Mr. Barwise will address you on "Our Hosts." (Applause.)

#### OUR HOSTS.

##### RESPONSE TO TOAST BY T. H. BARWISE.

*Mr. Toastmaster, Ladies and Gentlemen:*

There was one thing at least that I knew when this meeting of the Bar Association was called to Wichita Falls that hardly any other member of the Association did know, to wit: That the people of Wichita Falls are the most generous and most gracious entertainers that there are anywhere. (Applause.) There was another thing that I knew, that perhaps but few of you knew, and that was that although the thermometer had been ranging around 103, and although a Bar Association meeting, regardless of the season of the year, is a somewhat hot air occasion, I knew, nevertheless, that Matt Henderson, the chairman of the weather committee, would order a cool spell for the Bar Association if it came to Wichita Falls.

Wichita Falls is and has always been unique. When war was declared it was the first, among all the places in Texas, to raise volunteer soldiers, and it raised a higher proportion of volunteer soldiers, according to population, than perhaps any other city in Texas. (Applause.) Not only that, but when they raised that young army here there was not a man in the crowd, they tell me, who inquired how to get into the quartermaster's department, but all that any of them said was: "Give me a gun, and tell me which is the road to Berlin." (Applause.) And this city not only furnished the soldiers, but when it came to the Liberty Bond subscription this flourishing young city, which is the host of the Texas Bar Association, was the first city in Texas, if, indeed, not in the United States, that "went over the top" on the subscription. (Applause.)

As to our hosts, speaking specifically, the very successful and the very important meeting of the Texas Bar Association which has been concluded here today, is due in a large measure to the local bar. (Applause.) No local bar at any place in the State of Texas has ever shown as high a percentage of membership of the local bar in the Texas Bar Association as Wichita Falls, because this town shows at the close of the meeting today, by actual figures, a round one hundred per cent. (Applause.) It is not strange, then, that under these surroundings the Texas Bar Association has so much enjoyed its meeting here.

The people of Wichita Falls have made the hearts of the young soldiers, who happened to be within their gates, to throb with joy and their eyes to sparkle with delight. The khaki colored uniform in this city has been a complete passport to the hearts as well as to the homes of the people of this town. (Applause), and taking the cue from this, the lawyer's seersucker uniform has been a passport in Wichita Falls to everything good that there was. (Applause.)

So far as the local bar is concerned, of course, we expect only the greatest things. Ever since 1880, or perhaps it was 1881, when R. E. Huff was the whole of the bar of Wichita Falls, up until 1918 it has been composed always of the highest type, the most generous sort, and men of the highest integrity that could be found at any bar in the State of Texas. (Applause.) And in addition to what was said at the close of the meeting this afternoon about the appreciation felt by the Texas Bar Association for its treatment here, I know it is the sentiment of every visiting lawyer that they have never received more courteous treatment, more hospitable treatment, and in every way been given a better time, and the toast that I propose to the local bar is, that they are men who have always loved the Lord, they have hated the devil, and they have always voted the Democratic ticket. (Applause.)

**THE TOASTMASTER:** Mr. Barwise has told you of the magnificent things that Wichita Falls has done, and he has been here long enough to know, and we are willing to follow him in this instance, and take his word for it. But he has not told you what to my mind is the most magnanimous thing it has done, if I am correctly informed, and this reminds me that I told the wrong story in introducing Barwise. That was not the story I meant to tell, so I will have to tell the other one. Colonel George Brackenridge of San Antonio left the University of Texas some years ago a tract of land out on the river of something over four hundred acres, provided it should be used for educational purposes within fifty years, but failing so to be used it was to revert to the Commissioners' Court of Jackson county. That struck some curious gentlemen as strange. He happened to know the old Colonel, and asked him why, and the Colonel smiled blandly and said: "Well, thereby hangs a tale. I lived in Jackson county before the war. I have not been back there since. My folks were all secessionists excepting me, and I was for the Union. I was a young fellow, and one afternoon late a friend of mine came to me and said that they were going to hang me that night, and that I had better move on. I got

my father's best horse and I left, and I have not been back in Jackson county since, and out of gratitude for their letting me get off with my life I left them the reversion of that land." I am credibly advised that Joe Barwise was allowed to escape with his life.

On the toast list, talking about camouflage, we come now to a word that to every lawyer expresses more camouflage, and things that seem like what they ain't, and blasted hopes, than anything else, "Appeals." With a record full of errors that we take up to the appellate courts, the appellate courts have not got judgment enough to see any of them. A Wichita lawyer will respond to "Appeals," but before he does I have a story to tell as to him, and that the story may be properly appreciated Mr. Lanham will recite for your edification a beautiful and masterly little piece of verse, of his own conception, and which he sold to a funny paper for the whole sum of eight dollars. Mr. Lanham, will you kindly repeat the beautiful lines? (Laughter.)

#### A NICKEL.

BY FRITZ G. LANHAM.

Everything on this earth is of relative worth;  
Sometimes it is common, sometimes it is dear.  
Even relatives, too, may be judged in this view,  
If my kind of kindred is common to you;  
They are not always worth what they seem to appear.  
And, though it is funny, it's true, too, of money—  
Its value is changing and fickle;  
And you'll find this the truth if you'll start with your youth  
And trace your idea of a nickel.

When you were a boy there was no greater joy  
To lighten your sorrow and banish your gloom,  
Than to have and to hold, with its treasure untold,  
A wonderful nickel. Its power you extolled.  
For a blessing like it put the town on a boom.  
It gave you a corner, like little Jack Horner,  
On cake, pie and candy and pickle;  
And the bulls and the bears were the least of your cares  
In your limitless wealth of a nickel.



But when hastened by fate on to manhood's estate,  
 With gammon to right of you, gammon to left,  
     The sum of five cents did not seem so immense,  
     Nor the struggle to conquer it half so intense.  
 If you spent it you felt of but little bereft.  
 For you said to yourself as you gathered your pelf:  
     "A muckle takes many a mickle,  
 And a ride on the car or an average cigar  
     Will exhaust the full power of a nickel."

Oh, hypocrite, wait! Here comes the church plate.  
 You delve in your pocket, you squirm in your place.  
     For the preacher's appeal has disposed you to feel  
     Indisposed to obstruct the poor Hottentot's weal.  
 You are very ambitious to save the whole race.  
 "What sum is required?" You are really inspired  
     To snatch them from sin's scathing sickel.  
 Noble man! But you soar to your boyhood once more  
     And redeem the whole world with a nickel.

THE TOASTMASTER: And thereby hangs a tale. I have it on absolute authority that Judge Carrigan's wife—it was not voluntary—told him to church. It was in the evening, and the evening meal had been a very sufficient one, and the weather was warm, and the breeze was soothing, and the Judge sort of dozed off, and as he dozed the plate was passed around. As the plate came to him the Judge awoke to semi-consciousness, not consciousness enough to reach for the end of the poem, and in his half-conscious state an awful mistake was made, and a dollar followed his fingers out of his pocket into the plate, and Judge Carrigan appealed, but it was ineffective, as most appeals are. (Laughter.) Judge Carrigan will talk to you about "Appeals."

#### APPEALS.

#### RESPONSE TO TOAST BY JUDGE A. H. CARRIGAN.

##### *Mr. Toastmaster and Ladies and Gentlemen:*

The last few days have been very pleasant ones to me. The committee appointed me as one of three or four gentlemen to meet the visiting lawyers at the train and see that they were properly cared for at the hotels, and that they were given a hearty greeting. When I met the train down there there were a couple of gentlemen came up whose faces were familiar—two of the boys from Texarkana,

Lee Estes and R. W. Rodgers. I used to live over there close by Texarkana in my youth. They introduced me to a very distinguished looking individual. They did not do it in a formal way, but in a very perfunctory way, and they called him "Judge Hiram Glass from Austin." He looked at me, and I looked at him, and we shook hands and did not say anything, except I said to him: "I think I have seen you before. Your face is familiar. Not all of your anatomy, however is familiar." He said: "Yes, I have met you at the table quite frequently." (Laughter.) It reminded me of an incident that occurred over in Arkansas, my native state, at Little Rock. In Arkansas a lawyer was not proficient or qualified to practice law unless he was an expert poker player. It is pretty hard for a lawyer over there to make a living without playing poker. The bar would leave home, and go around on the circuit, and play poker for a livelihood, and quite frequently they met at Little Rock, the only town of any importance in the State, and at their conventions, or when they went to the Supreme Court, or to the United States Court, and, of course, they played poker ad libitum. One of them, a very celebrated lawyer, named McClure, was so successful that they called him "Poker Jack," and he was known throughout the length and breadth of that State as "Poker Jack McClure." There was a district judge who lived over in the adjoining district, and he was a very celebrated judge, and he also played a magnificent game of poker. So for years and years this thing had gone on in the usual way, and one day in the Capitol Hotel at Little Rock these gentlemen met, each of them in company with a party of friends, and one of them said: "Judge McClure, this is Judge Tom Fendell." They shook hands and looked up and down at each other, and old Poker Jack says: "Well, Tom, I have known you for the last thirty years, and this is the first time I ever saw you above your waist line." And when I saw Hiram Glass here the other day, it was the first time I had ever seen him above his waist. (Laughter.)

I have enjoyed, ladies and gentlemen, the fact that the visiting members of the Bar Association have enjoyed being at Wichita Falls. I have been very much entertained by them. I have enjoyed what they have had to say, and I have enjoyed their meetings, and I have been edified by all of their doings on this occasion. I was informed before the Association came here that the appellate judges would all be here, and when they spoke to me about this "Appeal" business, thinking all the appellate judges would be present, I was loaded for a speech down there, because I understood this meeting was for the purpose of reform in judicial procedure and courts, and I wanted to help reform the courts. I had been before them on appeals, and they had turned a deaf ear to me so many times that I wanted to get some work in, and I sat up there for three days listening for the opportunity to make a speech on this subject of "Appeals." I wanted

to talk to them out in the open, where I had the advantage of them. When they are on the bench they have the advantage of me, and I cannot tell them what I think about them without being subject to a fine. (Laughter.) I waited and waited, and finally I stepped over to Lee Estes and I says: "Lee, when in the name of the Lord is it coming my time to unload on these courts and lambast them? I am going to reform these courts." He says: "Carrigan, cut that out. We are afraid of them." (Laughter.) I say: "Well, I am not afraid of them—up here." (Laughter.) But he says: "Cut it out," and it reminds me of another Arkansas incident that happened at Little Rock. There was a negro went up to Boston, and he was a preacher, of course, and he went up there to see how things were carried on up there, by the white folks in Massachusetts, and he happened to be there on Easter Sunday, and he went to an Episcopal church, and there they had the Easter festivities. The negro preacher was very much entertained and impressed by what he saw, and he asked the Boston preacher if he would not give him the program that he pulled off on that occasion, so that he could take it back down to Arkansas and pull it off down there. The Episcopal clergyman said: "My good colored brother, I can do that all right, but it won't do you any good until next Easter." The negro preacher says: "Oh, that don't matter, I can go back down there and pull that off on those niggers, and they won't know the difference between Easter and Christmas." So the clergyman complied with the negro preacher's request, and gave him all his program and all his literature in regard to it. The negro went back home, and he advertised the fact that he was going to pull off something unusual in his church one night, because you know a negro cannot preach except at night. He had everything arranged, and he had a bunch of chorus boys that were to come in from the alley. The church was filled to overflowing, and the preacher told the negro boys that as he started this chorus they were to come marching in, and they were to come in singing, and he provided them an incense pot. He took a tin can and put some coal oil in it, and told one of the negro boys to hold the tin can in his hands, and he says: "Now, when I give a certain sign, touch a match to that and come in bearing that incense pot, and singing the song that I had learned to you." They told him all right. He had them properly groomed, and when he got along to that point where these boys were to come in and come around in front of his altar, he gave them the sign, and the negro boys came in. He noticed as they walked in they did not have the can in their hands, and the old negro was singing his song as they came along, and he looked around and saw them, and sang to the boys: "Oh, where, oh where, is your incense pot?" and the little negro boy sang, "I dropped it in the alley, it was too damned hot." (Laughter.) For that reason my discussion in regard to these "Appeals" will have to be cut out. (Laughter and Applause.)

**THE TOASTMASTER:** Judge Carrigan refers to Judge Hiram Glass. Some years ago I was down at Austin waiting for my case to be called in the Supreme Court, and W. O. Davis of Gainesville, popularly known to the folks at large as "Bill Davis," was passing up and down in front of the Supreme Court room waiting for his case to be called. Judge Glass was in before the Supreme Court, arguing his case and making a very fine argument, but it did not seem to impress Colonel Davis. He was anxious to get in and get his turn at the bat, and he came up to me and said: "Lee, do you know who that man is in there talking to the Supreme Court?" I said: "Yes, that is Judge Glass of Texarkana." Davis said: "Well, he don't understand the rules of this Court. The Court allows him an hour for argument, but it does not require him to take it." (Laughter.)

We have had a very, very pleasant time in Wichita Falls. I have only heard one discordant note, and that came late this afternoon, when, as we came out of the court house, somebody said to us that we were invited to come to the banquet tonight and bring our wives, and thereupon the face of my friend, Wright, from San Angelo, fell. He said: "I have not got a speech anyway, and how do you expect me to make one with my wife there? I have been telling her what good speeches I can make for all these years, and now she is going to get to hear one of them." (Laughter.) Into Mr. Wright's office one day drifted two gentlemen, who represented the relatives of an old lady, who had recently died, leaving a right nice little estate, and they wanted to divide the property up without much expense or trouble, and they asked Mr. Wright if they could not do it just this way. Mr. Wright looked wise and solemn and said: "Well, I don't know about that. I don't know whether you could or not. I will have to think about that." Then they thought awhile and they suggested another way, and Wright looked solemn and wise and said: "No, I don't know whether that could be done or not." Then they thought of a third way, and he still was uncertain. They got a little desperate, and they said: "Now, what will you charge us to find a way to close up this estate as cheap as you can?" He said: "Well, about five hundred dollars." They said: "Well, we are glad to find something that you know about." So Mr. Wright will talk to

you, after a little interlude here that will possibly be more entertaining than Mr. Wright about "Foundations," but the local committee will have a little interlude first.

MR. A. H. BRITAIN: Mr. Toastmaster and Ladies and Gentlemen: We have here just for this interval some talent from Call Field, and with the consent of the Toastmaster we will have them at this time, in view of the fact that they have to get back to camp. The first on the program will be the Call Field Jazz Band. (Applause.)

After the program by the band, the addresses continued as follows:

MR. BARWISE: Mr. Toastmaster, I move you, sir, that we extend these young soldiers our vote of thanks for the delightful entertainment they have afforded us, and wish them Godspeed in their future careers.

The motion was duly seconded and unanimously adopted by a rising vote.

THE TOASTMASTER: All of us here assembled desire to extend to you, to each and everyone of you, our most sincere thanks and cordial appreciation of this delightful entertainment, and to wish you all Godspeed.

To return to our program, whether it be "How Firm a Foundation, Ye Saints of the Lord," or a Rockefeller Foundation, or what not, we know not yet, but Mr. Wright will now tell us. (Applause.)

#### FOUNDATIONS.

##### RESPONSE TO TOAST BY W. A. WRIGHT.

*Mr. Toastmaster, Ladies and Gentlemen:*

A man with a grievance has no place at an after-dinner speaking, and yet I am that man. When I came to your fair little city, at ten minutes' notice they required me to respond to the address of welcome. I responded. When I went to the smoker the other night, at one second's notice they required me to talk. I talked. And with a very inferior notice, when the others had had six months to prepare, I was asked to respond to a toast tonight. Now, I want to lay a predicate for not talking. Out in the Golden West aforetime there lived a lawyer named Chris McGinnis, and when he was trying a case and

seeking to introduce a copy of an instrument in writing instead of the instrument itself, it was objected to by the lawyer upon the other side because the proper predicate had not been laid, and the objection was sustained by the court. Mr. McGinnis, having to have his instrument in, and not having the original, again attempted to introduce it. The objection was made again, and the court sustained it and said: "Mr. McGinnis, I have told you, sir, you cannot introduce that instrument in writing without laying the proper predicate." "All right, I will lay the predicate. Mr. Clerk, give me a pen," and he sat down and wrote and then read: "Comes now the plaintiff, by his attorney, C. C. McGinnis, and hereby lays the predicate. (Laughter.)

So I now say, comes now W. A. Wright, in propria persona, and hereby lays the predicate. It is unfair. What is more, I do not think a friend of thirty years standing, for I remember that some thirty years ago, when I was a young man of twenty and he was a man of about forty, the friendship of myself and the Toastmaster began, and to give me away like he did tonight requires an explanation at my hands. Today I felt it my duty towards this Bar Association to make a report that was in the nature of turning State's evidence, and tonight I am compelled by the force of circumstances to make a confession, a confession without the statutory warning (laughter), and upon compulsion, and not of my own free will and accord. It is true, as many of you gentlemen know, that heretofore at the various meetings of this august Association, I have made speeches, and like another distinguished orator who flourished once in Texas I have gone home to Mrs. Wright and given myself a most powerful recommend. (Laughter.) Aforetime, when the proper foundation existed, ladies did not go to the banquets of this Association, and I had no idea that I would ever be called down. But Mrs. Wright is here, I appeal to you, ladies and gentlemen, if a gentleman cannot in the bosom of his own family make a just estimate of his own abilities and his own doings, where in the name of God can he make it? (Laughter and applause.) And so I am tonight in the position of a former learned presiding judge of one of our Courts of Appeals, who in the days of long ago, sometimes made or laid a foundation, and his wife tested him in this way: She made him repeat: "Mrs. Winslow's Soothing Syrup," and if he said it as I have now indicated the foundation had not been laid but he got it: "Mrs. Winslow's Sloothing Slyrup" she knew. (Laughter and applause.) And so without a moment to prepare, while I was listening to the other talks here I was trying to prepare a speech of my own, and I found I could not stand the test. It would only be a Mrs. Winslow Sloothing Slyrup. (Laughter.)

I admit, I confess, you do not have to prove it, that in days gone by, with some six months to prepare it, and under the stimulae of the foundation that was then laid, I have made some brilliant ora-

tions before this Association that were received with a great deal of eclat. (Laughter.) But while I have been laying the predicate this evening I understand that my friend, Britain, has taken certain other of these lawyers out, and while I was laying a predicate they were laying a foundation. (Laughter.) I attribute it all to my friend Estes, from Texarkana, who had grown jealous over the brilliant reputation I was making at this Association, and who expected to make a speech himself, that he did not tell me one word about the foundation going to be laid, notwithstanding Mr. Britain notified me he told him not to do it. (Laughter.) Why, I have been expecting that crowd of gentlemen ever since I have been in this room, to start the goodly tune, "How Firm a Foundation Ye Saints of the Law." I call them saints, because gentlemen love to have attributed to them those faculties that they are farthest removed from. (Laughter.) Some of them this evening got a little huffy about some criticisms of lawyers. That makes me laugh. Why, don't they know that through all time in the past lawyers have been, and through all time in the future, lawyers are going to be criticized, and they are going to be talked about. Smollett and Field and Dean Swift in "Gulliver," and even Charles Dickens had a Sampson Brass and a Uriah Heep. But I have not believed that the general public believes these things of my profession, for I tell you I know them.

I have associated with lawyers for years. I know that under God's sun there does not exist on the face of the earth a more chivalrous, a braver, a manlier, or a more truthful set than the lawyers, and the general public knows that fact, and the general public is going to respect him, notwithstanding now and then there does creep into the profession a Sampson Brass or a Uriah Heep. Gentlemen, when the history of this war is written, you and I are going to know that the boys of the profession, those men with a bright future before them, from the ranks of the profession, from the law schools, have laid down the preparation that is the foundation for their life work, and have given themselves up to the service of this country, and that the older men, men who were too old to fight, are giving of their work, of their money, yea, of their very soul, to the end that that starry banner that has never known disgrace, may, before this war is over, float over Unter den Linden to the tune of "Yankee Doodle" and of "Dixie." (Applause.)

THE TOASTMASTER: A good many years ago the recent graduate of a law school drifted into the city of Hillsboro and took up his abode and opened up a law office. One day a client drifted in and told his story, and the Court happening to be in the adjoining county, the lawyer took the first train and went over to the nearby county seat and laid the situation before the Court.

The Judge listened to the young man patiently and with kindly interest and said: "Mr. Hart, you clearly are entitled to an injunction. Just get your petition up and bring it to me." The young man hastened back home and the next day he reported and said: "If your Honor please, I have got my petition up, and I got everybody in Hillsboro to sign it." (Laughter.) But he did not stay there long. It was bound to come, and Mr. Hart will tell you how he did it. (Applause.)

#### HOW I DID IT.

RESPONSE TO TOAST BY H. G. HART.

*Mr. Toastmaster, Ladies and Gentlemen:*

Early in my career I learned that the most successful form of camouflage was to tell the truth. We did not call it that in those days, but it was just as essential to the success of a man, who was liable to be shot if he came out and showed his true character, as it is today. Especially if you were a lawyer, everybody suspected you of lying, and they would never believe you, and the truth was the best concealment that you could adopt. That is the reason my distinguished friend, Judge Wright, was so free with his confession. He was satisfied none of you would believe it. If what was said about me a minute ago were true, I would confess it, because then you would not believe it, but it not being true, it is not necessary to notice it.

I am called upon to discharge an important duty, to act as a seer and predict what is bound to happen. Something was said here tonight about a seersucker as being the uniform of a lawyer. I am probably both. I am old enough to be the one, and I am young enough to be the other. (Laughter.)

I recall one night, when it was about as late as it is tonight, and we had been bored to about the same extent that you, ladies and gentlemen, have been bored, by a lot of fellows who got to be early on the program, and we all felt the need of sleep, a gentleman got up, and they indulged in this little pleasantry. They asked him about his speech: "Is your speech like a cat's tail, fur to the end?" He said: "No, my speech is like a dog's tail. It is bound to a cur." (Laughter.) That is one of the things that is probably included in the toast which was assigned to me tonight, one of the things that is bound to occur.

I was favorably impressed with but one of the speeches that was made tonight, and that was the one made by your townsman, Mr. Carrigan. Irishmen have been so ignorant all their lives that some of them called themselves Carrigan and some called themselves Cor-



rigan. This particular branch of Hibernionism to which your townsman belongs call themselves Carrigan. But the thing that Mr. Carrigan said that impressed me was in regard to the hot pot of incense. We had a practical illustration of that this evening.

It does not often happen that friction occurs among lawyers when there are no fees involved. (Laughter.) We have an expression that we apply to all matters which are purely philosophical or philanthropic, or something that does not pertain to fees, as being purely academic. There were several academic questions being discussed, among other things, expressing our appreciation of the things that had been done for us in the way of entertainment, and two lawyers took the floor at the same time. I have forgotten what it was that they wanted to express their gratitude for, but the one who desired to express the thanks of the Association for the favors extended to us by the ladies, instead of doing as Gaston and that other Frenchman, Alphonse, instead of saying, "Before you, Alphonse," or "Before you, Gaston," he could not brook the delay that occurred in allowing the brother lawyer to speak first, and because he was not permitted to thank the ladies for the entertainment that they provided for us on yesterday, he got mad and charged the other lawyer with discourtesy. And now, if there is anything on earth that ought to be resented by a lawyer it is a charge of discourtesy, because courtesy is one of the things that a lawyer knows how to provide, but does not know how to charge a fee for. (Laughter.) And yet, so great was the impression made upon the Bar Association here by the courtesies extended by the ladies, that the occasion of a little delay in an opportunity to express his gratitude caused a rupture in our proceedings over there, that I looked to cause the usual amount of bloodshed that results from controversies among lawyers. (Laughter.) Fortunately, the occasion passed with the usual results. (Laughter.) We are all here and have done ourselves no harm. The things that are bound to occur have already occurred.

I am glad of one thing, that I am not like other people. You have heard that expression before, but the particular application of it has reference to a thing which is going to occur, and has already to some extent occurred. My success with the opposite sex was based largely upon obtaining the vote of one woman. I obtained that at a time when the others were not allowed to vote. I am no longer a candidate. Were I a candidate now, when it is necessary to obtain a majority of the ladies, I am sure that I would never have succeeded in becoming a married man. My success as an after-dinner speaker is also based upon things of the long ago. It is not so much in what we say as in the receptive mood of those to whom you are addressing your remarks. An after-dinner speaker owes his success in every instance, that is, if his success is based on what occurred in the past, to the mood of those to whom he is addressing his

pleasantry. Had the proper predicate been laid—and it has been explained to you what a predicate is—had the proper foundation been laid, I could, with the use of half as many good puns as were perpetrated by my friend Lanham here tonight, have made a reputation that would have gone down through the centuries. The injunction that has been laid upon us to conserve our energies and other good things should apply to such a prodigal use of good puns. I made a reputation, due partly to the judicious use of a few puns and partly to the conditions that surrounded me, and the fact that it was an after-dinner speech, that is in some measure responsible for my being permitted to address you tonight. Understand, I am not a volunteer tonight. I realize it, and you realize it, that the speech I am making is one which requires for a proper appreciation a certain amount of stimulants or stimulus, or something of that sort, which the present occasion has not supplied. Therefore, if we are to succeed in the hereafter as after-dinner speakers, we have got to compete with men, who, like Lanham, can sell ten thousand dollars worth of puns for eight dollars. I realize that my day is past, that I belong to the things of long ago, and while I am yet comparatively young, the things to which I had looked for, distinction and glory, are in the sere and yellow leaf. But I certainly wish to thank the people of this community for the hospitality that has been extended to the members of my profession, and to the evidences that you have furnished of that large hospitality which in a degree has been passing. Whether it is due to our having grown wealthier, and belonging to an age “when wealth accumulates and men decay,” I cannot say, but certainly it is refreshing and gratifying to me, as I know it is to other members of my profession, to come into a community in which there exists that whole-hearted hospitality which you have manifested here during our visit to this city, and I trust that whatever success will come to this community—and I believe that some day you will be among the great communities of the country, measured in a materialistic sense, that Wichita Falls will be a town of great importance commercially, as I know it is now intellectually and socially—I trust that through the ages, through the times to come, there will be in this community the same spirit of hospitality, the same kindness, the same manly and womanly qualities which characterize your citizenship today, and that when we come back here again, as we will, we will find your community enlarged in respect to those things which make her truly noble. (Applause.)

**THE TOASTMASTER:** Years ago there came through Texas, as many of you will remember, the younger Salvini, Alexander Salvini, playing Don Caesar de Bazan. No one who ever saw him forgot him, or ever would. By some error of the booking

agent he was booked to play at Lampasas, then a little frontier town, and not much larger now. There were no posters on the boards showing sensational scenes with the fleeing beautiful woman, and someone rushing to the rescue, gun in hand, to draw the crowds, and nobody had ever heard of Alexander Salvini. So when the curtain rose for Salvini's appearance there was only a scattering crowd in the house, but among that crowd was a young man of taste and culture, who was carried away with the performance, and he went and called on Salvini that night at the hotel, introduced himself, and they sat and chatted for quite a while. Said the young man: "I do not understand how you could play so well to so small a crowd." Salvini said: "It is true, that was the smallest crowd that I ever played to, but I can say to you that I do not believe I ever played better, for I made up my mind when that curtain rose and I looked out on that crowd, that if these people in this country had never heard of me before, they would hear of me after tonight." The people here and hereabouts, at Wichita Falls, and this section, had not heard of our distinguished visitor, Dr. Pound—not many of us had, if any, until a few weeks ago, but here and hereabouts he will be heard hereafter. (Applause.) He will never come a stranger to these parts again. Dr. Pound will talk to you on the "Lay Idea of the Lawyer." (Applause.)

#### THE LAY IDEA OF THE LAWYER.

##### RESPONSE TO TOAST BY DR. ROSCOE POUND.

*Mr. President, Ladies and Gentlemen:*

A prominent citizen of Chicago, whom we will call Mr. Pressed Beef, entered into a literary conversation one night with a young lady from Boston, and presently the conversation turned on dialect poetry. "Why, Mr. Pressed Beef, certainly you have read some dialect poetry?" "Yes," he said, "I have read Chandler Harris and Whitcomb Riley, but the other night I got hold of some dialect poetry by a man named Chaucer, and really now, that man just carries it too far." (Laughter.)

Ladies and gentlemen, I protest that when Mr. President compares Wichita Falls to Lampasas, that is as egregious as to suggest some comparison between a mere professor and Alexander Salvini. But what strikes me as most torserian in that business is to intimate that a son of the short grass country can feel himself anything but at home here on the plains. (Applause.)

Now, it is one of the functions of a speaker on these postprandial occasions to punctuate the toastmaster's discourse, and after divers colons and semi-colons I want to put in a big, round punctuation point, and I want to begin at the beginning. I was interested in the discourse of the incoming president, who told us he was a member of a draft board. For my sins once I was a member of a board, the statutory name of which was "The Board of Insane Commissioners" (laughter), and in the second section of the Act the Legislature feelingly referred to us as "The Insane Board." (Laughter.)

I was more depressed when the next speaker put in a punctuation mark. Mrs. Gradgrind said once, when she was asked if she was in pain: "No," that there was a pain somewhere in the room, but she could not say that she had it. There is a speech somewhere in the room, but I was not born South of the Mason and Dixon line. It is not my birthright to pour forth polished poetry even to the height of the Heliconian Steeps, and I confess I cannot compete with Brother Lanham. (Applause.) But I felt better when the pot of incense came on. (Laughter.) Brother Carrigan conceits himself he can play poker. Brother Carrigan, I practised law West of the one hundredth meridian, and I also live in Arcadia. (Laughter.) And then, we have some law West of the Pecos, whither the Meridian of the Pecos goes clear to the North Pole. I remember there was a curious old character who was known in the short grass country as the Dutch Constable. He was six feet four inches high, his hip pockets were well provided with weapons, and he knew how to use them. On one occasion, when the United States Marshal did not quite dare to execute a writ of assistance, he was made a deputy United States Marshal to execute that writ, and he made the following return: "Received this writ this first day of December, 1895, and I hereby certify that I served the same upon the within named respondents by dropping them and each of them by the seat of their breeches into Sow Belly Creek, save the within named Frank Johnson, who departed this life during the execution of this writ, as required by law." (Laughter.)

Next we were treated to a disquisition, among other things, on a lawyer's speech, and I venture to supplement that by Mr. Dooley's definition of a lawyer's speech. "A lawyer's speech," he says, "is like the horizon. You think you can see the end, but you don't never get there." (Laughter.) One of the great after-dinner speakers of the last generation, when he was upon a program of this sort, with perhaps a printed program that contained the names of the speakers and the speeches assigned to them, was wont to pick up the program and look at it carefully and say: "Ladies and gentlemen, I call your particular attention to the subject assigned to me upon this program. I shall not have occasion to refer to it again." (Laughter.)

And yet I think I might, at the risk of making a lawyer's speech which is like the horizon, just say a word to you more or less seriously about the lay idea of the lawyer. I was very glad this afternoon to hear Brother Moseley say, that the lay idea of the lawyer does not prevail in Texas. You are a blessed commonwealth. They tell us the story of Sir John Strange, who was one of the great English lawyers of the Eighteenth Century, that when he was nearing his end he made provision for a monument, and he said to Lady Strange: "I want you to put on there, 'Here lies a lawyer and an honest man.'" She says: "Why, my dear, that is strange." He said: "Exactly; that is what people will say." But they did not. When that monument was duly put up and duly inscribed, and a visitor to the rural churchyard came in and looked at it, he said: "I would like to know how they came to put those two fellows in the same grave." (Laughter.)

But that idea of the lawyer has not always obtained. You will not find it in antiquity. That idea of the lawyer as a quibbler, a pettifogger, and extortioner, is an idea that we first find in the Twelfth Century. Prior to that time our clerical brethren had a monopoly for a season of the practice of law, but presently there arose a lay profession of lawyers, and more and more they pushed Brother Peter and Brother Bartholomew out of the courts and Brother Peter and Brother Bartholomew had a monopoly of the pulpit, and every Sunday morning they could expound to credulous congregations the danger to morality and Christianity involved in the rise of this profession. (Laughter.) From that conflict between the old profession and the rising new profession this tradition dates. At that time every trade and profession and cult had a patron saint, and our clerical brethren of that time were fond of relating this anecdote about our profession. One Yves of Brittany was a great lawyer of that period, and for his sanctity, his piety, the pope granted that the lawyers may have a patron saint, and Yves was to be blindfolded and turned loose in the nave of Saint John Lateran, and when he embraced the statue of one of the saints that saint was to be the patron saint of the profession. Yves was blindfolded, and he walked about feeling the statues in the nave of Saint John Lateran, and he came to the statue of St. Michael putting down Satan, and as in duty bound he embraced the statue of Satan. (Laughter.) For who but Satan could be the patron saint of a pernicious profession that was robbing Brother Peter and Brother Bartholomew of a large source of their revenue? Well, for a season the tradition went along piously in the pulpit, but at the Reformation a new situation arose. On the one hand the lawyer was inclined to resent. He was inclined to be critical. He was inclined to challenge authority. That made the orthodox church man very suspicious of him. But, on the other hand, he was inclined to admit the authority of the Roman law, and

the reformers looked askance at anything that had a Roman label. So, on the one hand the pious Catholic would say: "The more one is a good jurist, the more he is a bad Christian," but on the other hand, Luther was equally clear that the lawyer was nothing short of a parasite upon the community, for Luther, like many other strong personalities, like some we have seen in recent times, had a distrust of anyone who urged adherence to rule and principle, and the holding down of the individual personality by settled principles. Luther was never weary of declaiming against the lawyer. He said that any jurist with three dollars in his pocket could pervert any statute made by any legislator, short of the Almighty. Luther's diatribes against the lawyer became very popular in England in the next century, because when England of the Commonwealth began to get arbitrary, when Oliver Cromwell tried to put down the Court of Equity and to lay down some extra-legal rules for the guidance of courts of law, he soon found, in his own language, that the sons of Belial were too hard for him, and Milton, taking up the cudgel of the Protector, complained of the lawyer. He said: "These lawyers were never trained in justice or equity, but spent their days in contemplation of fat contentions and flowing fees." That tradition gradually waned in the next century, but the circumstances of American life presently revived it, for Colonial America was the period of the clergyman, just as Nineteenth Century America was the period of the lawyer. In Seventeenth Century America, when men sought to enact a new bit of legislation, they did not send to a lawyer to ask him if it was constitutional. They sent for a clergyman to tell them whether it was in accord with the word of God. When the Commonwealth of Massachusetts in the Seventeenth Century codified its laws, it did not take the trouble to put any lawyers on the Commission, but the Commission was well supplied with clergymen.

But with the growth of trade and of commerce, and a more complex society, the need for rule and system and logic in the administration of law, in the administration of justice, brought in the lawyers, and the clergy found themselves pushed into the background. Where all the magistrates had been clergymen they gradually came to be lawyers, and in the Nineteenth Century the lawyer divided the hegemony with the soldier, until the pious profession, which had been displaced, did precisely as they did in the Sixteenth Century. After the Reformation the great offices of State, which had been filled by clergymen, began to be filled by lawyers. Luther was clear that that was a triumph of the material over the spiritual. The clergy after the Revolution were quite clear that this phenomena was not economic, but was due to the greed and graft of a parasite class. But people got used to this situation presently, and in the generation after the Civil War nothing but a few stale jokes remained to remind us of this tradition. In the present generation it has burst forth again, refurbished up, if I can mix metaphors, full bloomed.

Why? I think it is because the Twentieth Century has seen the rise of new professions. The engineer sees an attorney general but he does not see any general engineer. The physician sees that there is an attorney general, but he does not see any surgeon general of the Commonwealth. The journalist sees the things which he has published in print, and which the public is bound to believe on his authority. The courts persist in antiquated ideas, in trying in their slow and cumbersome fashion for weeks and months, and he sees that although his thunderings may disturb administrative officers, courts and judges, in their quiet way go on, undisturbed by all his clamor. The claims of rising professions, seeking a place in the sun, more than anything else, are responsible for the revival of this tradition in the present.

Now, some of us have seen some of these learned professions in action. I think it has been our experience that when physicians and surgeons and engineers lend their aid in the administration of justice, they do not exactly serve God for naught. (Laughter.) Nevertheless, they are clear that the taking of fees by the lawyer is a pretty doubtful bit of business.

Nevertheless, the revival of this tradition in the present is nothing short of a tribute to the lawyer, and I take it that until anarchy or the millennium does away with the need for an organized administration of justice this tradition of Twelfth Century monks, furbished up by Luther, handed down by the Colonial clergy, and revived by the rising professions of the present, is likely to remain bright and perennial. But we can reflect, after all, that this is but a tribute to us; that it recognizes the established place of the lawyer in the fabric of society; and we can say, with one of the great jurists of modern times: "So venerable, so majestic is this living temple of justice, of which we are the servants, this immemorial and yet freshly growing fabric of our law, that the least of us is proud, who may point to so much as one single stone thereof and say 'The work of my hands is there.'" (Applause.)

**THE TOASTMASTER:** Ladies and Gentlemen of Wichita Falls: With this closes the Thirty-seventh annual meeting of the State Bar Association of Texas, the first in its history where the interest in the meeting and the attractiveness of the town have held it in session for three days. Into its Annual Records is written the magnificent hospitality of this magnificent little city. And that is not the best of it. We have come to the Panhandle country, and with us we take away an enrollment of one hundred per cent of your magnificent lawyers, and all of the force that it adds to the State Bar Association for usefulness to the profession and to the State. We thank you for our cordial and magnificent entertainment. (Applause.)

## REPORT OF COMMITTEE ON DECEASED MEMBERS.

*Hon. C. K. Lee, President of the Texas Bar Association:*

Your Committee on Deceased Members begs leave to report as follows:

By reason of want of sufficient data your committee has not prepared memorial notices of several members who have died since the report of the last Committee on Deceased Members. It recommends that said data be obtained and the committee which shall succeed it be requested to prepare that notice. It has prepared memorial resolutions on Robert S. Neblett, of Corsicana; Thomas D. Montrose, of Greenville; Ray Hunter, of Fort Worth; James C. Scott, of Fort Worth; Moritz O. Kopperl, of Galveston; William D. Williams, of Austin; A. B. Storey, of San Antonio; Leroy G. Denman, of San Antonio, and Waller T. Burns, of Houston.

The committee recommends that the resolutions be spread on the permanent records of this Association. We would ask that each and all of us here, in thought and in spirit, plant at least one little white flower on the graves of each of these, our brethren, who have gone to the land lying beyond life's westernmost horizon.

Respectfully submitted,

F. C. DILLARD,  
F. D. MINOR,  
JNO. W. BRADY,  
R. E. THOMASON,  
R. W. STAYTON,

Committee.

Dr. Dillard moved the adoption of the report of the committee, which motion was seconded by Mr. Claude Pollard, and the report was unanimously adopted by a rising vote.

## RAY HUNTER.

Ray Hunter, the son of Judge Sam J. Hunter and Mrs. Mollie Hunter, was born at Sulphur Springs, Texas, September 11, 1876. When a boy only eight years of age he moved with his parents to Fort Worth, and there lived until he was stricken by the hand of death on September 25, 1916, when he had just passed the fortieth year of his life and was entering upon his mature manhood. His education was commenced in the public schools of Fort Worth, continued in the Fort Worth University, and completed at Marmaduke Military Academy, Sweet Springs, Mo., where he graduated with high honors. After graduation he began the study of law in the office of Hunter, Stewart & Dunklin, the senior member of the firm being his father, who, long recognized as one of the leading lawyers of Texas, and who served as a judge of the Fort Worth Court of Civil Appeals, with kindly guid-



ance laid in the mind of his son the foundations of a thorough knowledge of the principles of the law.

While still pursuing his legal studies, in 1897, young Hunter was appointed deputy clerk of the Court of Civil Appeals at Fort Worth. Here he continued his legal studies, and in 1902 was admitted to the bar. In 1904 he became stenographer to the Appellate Court, which position he filled to the satisfaction of the court until October, 1905, when he resigned to enter the active practice of the law with his father. From that time until the time of his death he devoted himself successfully and faithfully to the representation of a large clientele, and was an active and successful trial lawyer. He had a wonderfully clear mind and was blessed with that faculty, so useful to lawyers, of remembering the nature and style of cases and where to find them. It is declared that he remembered the nature and style of every case that was filed in the Appellate Court during his eight years' connection with it; that he could give the name of the judge writing the opinion, and the book of the Southwestern Reporter containing the case, and could tell the important points decided, without reference to the book itself.

Mr. Hunter stood high in the Masonic world and enjoyed the reputation of being the brightest Mason in the City of Fort Worth, holding a life certificate of the Grand Lodge to lecture and instruct the members of the Masonic Fraternity.

Ray Hunter was a good son, a loving husband, a kind father. He had fine social qualities, a lovable disposition, and was a universal favorite with the members of his bar.

#### JAMES C. SCOTT.

It is a charge frequently made these days, happily far less true than the layman is inclined to believe, that the law has become altogether commercialized; that the lawyer has become the business man, better grounded in the ways of trade than in the learning of Blackstone and Kent; and more solicitous to secure a good fee than to succeed in upholding the principles of right on which the law is founded. From the old days there have come down to us of this newer day some lawyers who, in devotion to their profession, in adherence to the ethics of it, in the love of the law, are almost forgetful that the law has its practical business side. They are the lawyers of what we call the "Old School," wedded to the law as to a bride, and loving it as the foundation of justice and the embodiment of the principles of right; solicitous to sustain it in its purity, and full of righteous indignation toward any lawyer who would prostitute the law to unworthy ends.

Such a man was Judge James C. Scott, of Fort Worth. He came to us from the elder day. He was born at Boonville, Mo., May 1, 1841, and died at his home in Fort Worth, Texas, January 31, 1918,

at the ripe age of seventy-six years. He began the study of law when but a boy, but later entered the Kemper Military Academy at Boonville. At the outbreak of the Civil War, with a high sense of duty, he laid aside all thought of immediate law study or law practice and entered the Confederate army. He was captured and spent several months in a Federal prison, glad to yield his liberty for the cause of his country, but deeply regretful that his imprisonment forbade his rendering service on the battle front. Prior to the Civil War he had removed to Colorado, and after the war he returned there, part of the time working on a railroad, and part of the time teaching school. In 1870 he moved to East Texas, and lived at Jefferson, working for the railway as baggage master. In 1875, before any railroad had reached Fort Worth, he moved to that place, then little more than a village, but even then giving promise of its splendid future. He passed the bar examination in Tarrant County, and in 1876 was appointed the first City Attorney of the City of Fort Worth. From that time until his death he was in the active practice of his profession, and his life's history is closely linked with the history of his community. He was faithful in word and work in the interest of his clients. He maintained a high standard of integrity in all his dealings. His respect and love of his profession was marked, deep-seated and amounted to reverence. He exemplified to this generation a respect for his calling characteristic of the earlier day, and has left a record worthy of emulation by all the members of his profession.

#### MORITZ OSTERMAN KOPPERL.

Truly "in the midst of life we are in death." The Grim Reaper stands ready everywhere with his scythe. Not only are the sons of men, hour by hour, minute by minute, second by second, stricken down and carried away by disease; but accidents, unforeseen and unanticipated, constantly attend their footsteps to suddenly and unexpectedly snatch them from the scenes of life into the shadowy beyond.

On the 25th of July, 1917, Moritz Osterman Kopperl, a member of this Association and of the Galveston bar, was suddenly called from life, by drowning in the Galveston ship channel. Mr. Kopperl was a native son of Texas, and of the city where he lost his life, having been born there on the 15th of March, 1875. Indeed, his whole life was identified with Texas and Texas interests. Instead of leaving Texas to obtain his legal education in a university foreign from this State, he entered the law department of the University of Texas, and graduated there in 1898. Not only did he find his law diploma in the city of Austin, but there, too, he found his wife, a month after his graduation, being wedded to Miss Waldine Zimpleman of the city of Austin. After his marriage he returned to his native city, and at the age of twenty-three entered the practice of the law with the firm of Austin & Rose. He was associated with those gentlemen

until Mr. Rose moved to Beaumont. After this he continued his association with Judge Austin until Judge Austin's death. From that time he practiced law, alone and successfully, until at the age of forty-two, in the prime of his manhood, he was snatched by the sad accident from a useful career.

As a lawyer Mr. Kopperl was faithful to his clients and earnest in their interests; as a member of the community he recognized and fulfilled the duties of good citizenship; in the family circle he was considerate, kind and devoted. All the obligations of life he met and fulfilled with a high sense of duty, and he has left a memory cherished by the fellow citizens of his native city, and by his fellow members of the Bar of Texas.

#### WILLIAM D. WILLIAMS.

The subject of this memorial, William D. Williams, was born at Mt. Vernon, Kentucky, August 22, 1855, of an old and well known Virginia and Kentucky family. Three of his great-grandfathers fought in the Revolutionary army. His father, a merchant, moved to Carthage, Ill., in 1857, where William D. Williams was raised and received a public school education. He graduated at Abington College, Ill., in 1872, and shortly afterwards came to Seguin, Texas, where he married Miss Jettie Pearson, a former college mate at Abington, and who survives him. He first engaged in the private banking business at Seguin, then became a farmer near Lockhart, Texas, and to both these vocations he brought the same energy and zealous determination that characterized him through life.

He then removed to Austin and studied law in the office of Peeler & Maxey, and after his admission to the bar, became a partner of Col. John W. Robertson, a distinguished lawyer of Austin. Later he removed to Fort Worth, Texas, and practiced law there with marked ability. He served the city of Fort Worth as city attorney and as mayor during his residence in that city; also represented Tarrant County in the Legislature of Texas, where he became conspicuous for his ability and grasp of legislative matters. The Intangible Tax Law was a notable contribution of his to the laws of the State.

In 1909 he was appointed by Governor Campbell to a place upon the Texas Railroad Commission, which office he continued to occupy until his death, which occurred on October 1, 1916. In addition to the above honors and services, he was Treasurer of the Texas Bar Association for many years, having been first elected to this place in 1892.

As a lawyer, brother Williams was more than ordinarily successful, and he always commanded a good practice. He was recognized by his associates as a foeman worthy of their steel, but was always scrupulously observant of the best traditions, and of the highest ethical principles of his profession.

As a public official, he was distinguished for his great fidelity to duty, and was unusually conscientious in the performance of every task which came to his hand. Throughout his exceptionally large public experience, there was never the slightest blot or blemish upon his reputation.

As a man, he was marked by industrious habits and possessed great energy and perseverance. He was blest with a kindly and generous disposition, and his great heart beat in sympathy with the toiling masses, and the fortunes and welfare of the poor were ever his greatest solicitude. He was unusually modest and diffident, and while sensitive and suffering great physical pain during the last years of his life, he bore his afflictions cheerfully and uncomplainingly. He died beloved and universally admired by the bench and bar of the State, and mourned by thousands unknown to him, but for whom he labored all his life.

When all is told, the world is better that William D. Williams lived, and as a memorial to his great public and private services and of the respect in which his memory is held by the bar in Texas, these resolutions are made a permanent part of the records of this Association.

#### A. B. STOREY.

Judge A. B. Storey, a prized and honored member of the San Antonio Bar and of this Association, died at his residence in San Antonio on the 5th day of July, 1917, in the sixty-second year of his age, having been born in the city of San Marcos on the 19th day of August, 1855.

Born in Texas, he acquired his education and wrought his life work in his native State, of which he was a true son and to whose interest and welfare he was devotedly attached. After finishing his school life, which was spent at Coronal Institute and Trinity University, he was admitted to the bar in September, 1876, in his native town of San Marcos. For a time he practiced law there, but later followed his profession in Blanco City and Lockhart. Later still, desiring a wider field for his activities, he moved to the city of San Antonio, taking and holding a high position among the members of the bar.

Judge Storey, while not holding or seeking political office, was chairman of the Democratic State Executive Committee during the administration of Governor Campbell. He presided over the deliberations of that body with such ability and impartiality as to merit and receive its approval and likewise the approval of his fellow Democrats of the State. In politics he was a Democrat in the widest and best sense of the word, believing that government is instituted for the benefit of the governed and that it is safe to leave to the people the ultimate decision of governmental policies.

Judge Storey was a son of Captain Joseph G. Storey and Sarah B. Storey of San Marcos. Captain Storey was a brave Confederate sol-

dier, devoted to the cause of the South. From him his son inherited an unswerving allegiance to his southern land and an abiding interest in the welfare and prosperity of the southern people; but, at the same time, he remembered that at Appomattox the war between the States was ended and he realized that all, North and South, are citizens of a common country, to whose up-building, prosperity and happiness they should devote their best efforts without sectional jealousy and with no feeling of bitterness engendered by the war between the States. In this spirit he devoted himself to the cause of his people.

The spirit which made Captain Storey a brave soldier and a generous adversary, inherited by his son, made that son courageous in all the affairs of life, battling valiantly in the court room for his clients, but an adversary courteous and generous to his opponents; and he passed away respected and honored by the members of his bar and the members of this Association, who appreciate his ability as a lawyer, his worth as a man and his usefulness as a citizen.

#### LEROY G. DENMAN.

On the 15th day of September, 1916, a shock was given to all Texas; for on that day the papers of the State announced that Judge Leroy G. Denman had suddenly been called from a life of useful labor to the rewards awaiting the good man beyond life's horizon. Though laboring under a high blood pressure, giving warning that the death angel might at any time beckon him, at the same time his general health was so good, his appearance of splendid physical manhood so excellent, that the State was surprised and startled when the summons came. The members of his profession were deeply saddened in the realization that a splendid man, an excellent lawyer, a great and just judge was called from their midst.

Judge Denman was born in Guadalupe County on the 31st of October, 1855, and was educated in the schools of Texas. After leaving school, like a great many other lawyers, he received a further and useful education and most useful discipline by himself teaching school. In this experience there was firmly fixed the knowledge he had acquired in his attendance upon school, and there was impressed upon him that thing so necessary to lawyers—the need of clear thinking, the helpfulness of clear expression of the clear thought, the necessity of rigid analysis and the power of lucid statement.

Judge Denman took the law course at the University of Virginia, one of the most justly celebrated law schools in America, and graduated there in 1880 with the degree of Bachelor of Law. The graduation from that school was a certification that he was thoroughly grounded in the underlying principles of the law, and it then lay with him, his energy, his ability, his fitness for his profession to succeed or fail.

In 1881 he married Miss Sue E. Carpenter. For two years he fol-

lowed his profession in New Braunfels.\* In 1884 he removed from that city to San Antonio and formed a partnership with his brother-in-law, Fred Cocke, the firm being Cocke & Denman. The diploma he received from the University of Virginia was not unworthily held. The seed which had been sown in the University did not fall upon ground which should bring forth a promising crop, soon to fade away, but they were planted where they brought forth not only a promising crop, but the rich harvest. From the very beginning of his professional career Judge Denman showed himself to be a lawyer worthy of the name and worthy of the best traditions of his profession. There came to him a large clientele, bringing business of importance. In 1885 Mr. Thomas H. Franklin removed to San Antonio and entered the firm of Cocke & Denman, which then became Cocke, Denman & Franklin, but shortly afterwards Mr. Cocke retired and the firm became Denman & Franklin. This firm stood very high with the lawyers in the State, and was worthy of its standing by reason of the integrity and ability of its members. It also commanded the respect and confidence of the laity and had a large and lucrative practice.

In 1894 Judge Denman was appointed to the Supreme bench of the State by the late Governor, James S. Hogg. He justified the wisdom of the appointment by the soundness and clarity of his decisions. His career on the bench was highly honorable. He took part in the decision of a great many important cases, and to the determination of them brought a wealth of learning, a clearness of perception, a power of analysis, a strength of mind, a sense of justice leading to correct results; and when he wrote the opinion of the court the reasons he gave for the conclusion reached were of convincing character. In the first convention after his appointment, when he had been not long on the bench, Judge Denman was nominated only by a narrow majority, but before he left the bench no man could have defeated him for his seat, and his leaving was a source of profound regret to the bar of the State. In 1899, however, he found it wise to retire, and returned to San Antonio, where he again entered the practice of the law with his old firm, it then having in it some new members. The firm has always commanded a large practice and one of high class.

Judge Denman was not only an excellent lawyer, but he was a man of fine business qualities. About four years ago he was elected President of the San Antonio Loan & Trust Company, and chairman of the Board of Directors of the San Antonio National Bank. Both of these positions, which he was occupying at the time of his death, he filled with marked ability. All the while, though, he continued to practice the profession of his choice, and it is as a lawyer, and not as a business man, that we lawyers love to think of him. It is a thought somewhat saddening that no matter how able the lawyer, no matter what may be his reputation with the great body of the citizenry, no matter how high his standing with the brethren of his profession, unless he happens to become a judge of one of the higher courts, where his

thought and the result of his labors are embodied in its opinions, his fame is ephemeral. Fortunately for Judge Denman he was for awhile, as we have said, on the Supreme bench of the State, and in the volumes of the Texas Reports from the 87th to the 92nd Texas, inclusive, is written in his opinions an enduring testimonial to his ability as a lawyer and his wisdom and justice as a judge.

Judge Denman was a profound lawyer, a just judge, a good citizen, a loyal friend, a generous, loving husband and father, a man true to all that is best and noblest in life. He left to the State an enduring reputation, and to his family and the members of his profession a memory fragrant with noble purposes undertaken, high deeds accomplished.

#### WALLER T. BURNS.

Judge Waller T. Burns was born in Fayette County, Texas, January 14, 1858, the son of Colonel James Randolph Burns, himself a distinguished lawyer of the Fayette County Bar and one of the pioneers in Texas legal annals. Judge Burns was 7 years old at the close of the Civil War and hence opportunities for education in Texas were quite limited. From his earliest activities he manifested an interest in the law and a desire to follow his father in that splendid profession and his thoughts and studies, in common schools at LaGrange and in the high school and in college, had as their ultimate aim the making of a lawyer.

He was admitted to the bar in LaGrange at the age of 22 years, after passing a successful examination; and, leaving that city almost immediately in search of broader fields, located at Galveston. LaGrange was, before and immediately after the war, the home of some of the most distinguished lawyers in Texas, and from these, young Burns, as he grew up, drew his hopes and inspirations. He began the practice of his profession at Galveston and by close application to duty, a genial and pleasant personality, an active and intelligent mind, he rapidly acquired a standing at the local bar in that city, and then the commercial metropolis of the State.

In February, 1882, he married Miss Maggie Killough, a daughter of Captain I. G. Killough, of LaGrange, and a granddaughter of Colonel Jno. B. Moore, the founder and father of LaGrange, and one of the distinguished pioneers of Texas.

In 1888, on account of his wife's health, Judge Burns moved to Houston and started anew. He rapidly built up in the practice of his profession from the beginning until he left the practice to enter upon the duties of the bench. Although a native Texan and deeply attached to his State and her people and institutions and thoroughly devoted to all of the ideals of the South, and Southern to the very core, Judge Burns was, nevertheless, always a Republican in politics and active in Republican councils.

In 1896 he was elected in the Houston District to the Texas Senate

over the regular Democratic nominee, by a large majority in a district that was normally largely Democratic—his election being a personal tribute to his splendid character and fitness for the position and in his four years of service in the Senate no man of any party faith was more loved or respected than Judge Burns and no man's counsel was more frequently sought on all questions of State policies by those in charge of affairs of the State than that of Judge Burns.

In March, 1902, the State of Texas was divided into four Federal Judicial Districts and the Southern District was created and President Roosevelt appointed Judge Burns to preside over said court. In accordance with the terms of the bill, he qualified on the first day of July, 1902, and continued to serve as the judge of said court up to the date of his death, which occurred on November 17, 1917, after a brief illness at Laredo, Texas, where he was then engaged in holding the regular term of the United States Court.

Judge Burns was a great lawyer but a greater judge and a still greater administrator. His record in handling large properties in receiverships is unparalleled. Appeals from his decisions in matters of that kind were seldom taken and on questions of administration he was never reversed. Following the great storm of 1915, when so much cotton was lost and damaged on the Texas coast, he appointed a receiver to take charge of all storm damaged cotton not subject to identification and administer the properties and proceeds thereof for the benefit of the common interests of those who had suffered losses. Representing a large number of persons and corporations, made defendants in that proceeding, were some of the ablest lawyers in Texas, contesting the appointment, the jurisdiction of the court, and every inch of the ground; yet within sixteen months from the date of the storm, Judge Burns had reduced through this proceeding all of the available cotton to possession, converted it into money and had distributed the net proceeds thereof, exceeding \$700,000.00 in money, among more than 400 claimants, according to his judgment of their respective merits, and not a single appeal was taken from his action. This is cited merely as one instance of a great number, demonstrating his broad conception of justice, his keen analytical powers and his splendid capacity to look through shams and shadows and pretenses and to the merits of every controversy.

The first wife of Judge Burns died in January, 1906, and in November, 1913, he married Mrs. Grace Willis, herself the daughter of a distinguished lawyer, Judge M. C. McLemore, of Galveston, a woman of unusual attainments of head and heart, who survives him; he is also survived by his three sons, the elder, Coke K. Burns, being a member of the Houston Bar, and the two younger, Waller T., Jr., and Richard F., being still in school.

No man was ever better loved in the community in which he lived; no lawyer ever more completely had the confidence of his clients; no



judge ever more completely had the respect and confidence and veneration of the bar and the public; no citizen ever had higher ideals or greater love for his country or more perfect loyalty to its flag; no family ever knew a more tender, kindly or gentle husband or father, and no man, in his sphere of action, has ever more justly deserved the tributes paid him by all classes.

In the fullness and vigor of his mental and physical manhood, and almost at the very hour of his death, in the full discharge of his duties, he gave up his life and laid down the judicial ermine, returning his soul to his Creator and the ermine to his country, each as spotless and stainless and unsullied as the day of its creation.

#### ROBERT S. NEBLETT.

Of many men little need be said save that they were born and that they died. But of Robert S. Neblett, of Corsicana, Texas, it is hard to say too much in praise.

The bare outline of his life is that he was born on March 16, 1855, in Grimes County, Texas, lived from his early childhood, with brief intermissions, in Corsicana, Texas, till his death on January 18, 1918, was admitted to the bar in 1877, was engaged till the end in the active practice of his profession, was for three years mayor of Corsicana, for six years chairman of the school board of Corsicana, for a time chairman of the board of managers of the State Orphan Home, and at sundry times a member of the Legislature of Texas. Every public office he held in the highest sense as a public trust without the suspicion of faithlessness in the discharge of its duties.

But it is a man, a citizen, a gentleman and a lawyer that his brethren of the bar knew him best and loved him most.

All, whether laymen or lawyers, and most of all those who knew him in daily intercourse, testify to his high worth, to his unblemished character, to his full right to unqualified praise as a man, a citizen and a gentleman.

As a lawyer engaged in the active duties of his profession for over forty years, trying cases throughout the State in widely separated counties, every lawyer who was ever with him or against him will avouch his ability, his learning, his industry, his accuracy, his thoroughness, his courage, his independence, his patience, his courtesy and fairness to court and adversary. No opponent, however hotly contested the case might be, could fail at the end of the trial to have a fresh accession of affection and admiration for Robert S. Neblett. No judge before whom he appeared could deny him confidence and trust. No client but knew that everything had been done for him that care, skill and ability could do in the presentation of the facts and the argument that followed. In the preparation of a case for appeal and in the prosecution of the appeal he had consummate skill.

But those who counted him as a friend—and who that knew him

was not his friend?—mourn most of all his passage into eternity and will long note and be slow to forget the high qualities, civic and professional, that endeared Robert S. Neblett to a very wide circle.

To those within that sacred inner circle, where lie the dearest affections of the heart for wife, children and kinsmen, how irreparable is their loss! How vain any human words of comfort! May there be ever with them the solace which comes only from God, as there will abide with them—and not with them alone, but with the great number who loved him—the memory of one of “the best men that e’er wore earth about him.”

“Peace to his ashes.”

#### THOMAS D. MONTROSE.

Thomas D. Montrose, of Greenville, Texas, died at his home in that city on the 22nd day of March, 1918, after a short and sudden illness. He was born at LaGrange, Texas, on the 15th day of March, 1850. He was educated in the schools at Gilmer, Texas, under Prof. Morgan H. Looney, and read law under Gov. O. M. Roberts, who was the tutor of so many of our able lawyers of Texas. By special act of the Legislature he was admitted to practice in 1870 while still only twenty years of age, and the same year commenced to practice in Greenville, then but a village, which he made his home continuously until the time of his death. In March, 1903, he was appointed district judge of the newly created Sixty-second District by Governor Lanham. He served in this capacity for ten years, two by appointment and twice by the election of the people. On retiring from the bench he resumed the practice in which he was actively engaged at the time of his death.

This brief record tells in barest outline the life history of a conscientious lawyer, a just judge and a good man. Judge Montrose was a lawyer who believed thoroughly in the ethics of the profession and scrupulously applied them in his practice. He would not have known how to do an unethical thing toward his own client or the opposing client, or to take an unfair advantage of opposing counsel; and had anyone suggested the doing of such a thing he would have repelled it with scorn and contempt. To his brother lawyers he was always courteous and obliging, and to the young lawyers he was helpful with words of encouragement and wise counsel. On the bench Judge Montrose was exceedingly fair. No lawyer could complain that in Judge Montrose's court he did not receive from the bench the closest attention; that the facts of his case were not carefully weighed and the law of it maturely considered; and no client, even though defeated, could leave his court saying the judge did not give him a fair trial. It was Judge Montrose's high purpose that his court should be indeed a Temple of Justice, and that the Goddess of Justice should preside therein to weigh all matters with fair and impartial scales. As a citizen Judge Montrose stood on a very high plane. His heart was turned,

his hand was given to every good word and work. He loved the town which he so long made his home, and did all in his power for its material prosperity and for the up-building and maintenance of a high and pure social and civic life. He was a consistent member of the Baptist Church. The teachings of the Man of Galilee were the rules and precepts of his life, and the light which streamed from Calvary's cross lightened his pathway through life, and dissipated for him the shadows of the Valley of Death. Beyond the portals of the grave he saw the walls of the shingling city, and the beacon lights of a never-ending life.

# TEXAS BAR ASSOCIATION

## CONSTITUTION.

### ARTICLE I.

#### NAME AND OBJECT OF THIS ASSOCIATION.

Section 1. This Association shall be called the TEXAS BAR ASSOCIATION.

Sec. 2. Its objects shall be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage intercourse among its members.

### ARTICLE II.

#### MEMBERSHIP.

Section 1. Any attorney of the Texas Bar, or any clerk or deputy clerk of an appellate court of the State of Texas, in honorable standing upon his written application, may be entitled to membership at any regular meeting of the Association. Said application must be endorsed by three members of the Association, and a fee of \$5.00 shall accompany the same, \$2.50 initiation fee and \$2.50 annual dues.

Sec. 2. Such application shall be referred to the Board of Directors, who shall report the same to the Association, and if said report be favorable a ballot shall be taken, and if four-fifths of the members voting shall be in favor of the applicant he shall be declared elected.

### ARTICLE III.

#### OFFICERS AND THEIR DUTIES.

Section 1. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, who shall be chosen by ballot at a regular meeting, by a majority of the members present and voting.

Sec. 2. There shall be a Board of Directors, five in number, elected at the same time and in the same manner with the officers, and the President and Vice-President shall be ex-officio members of the board.

Sec. 3. The officers and directors shall hold their offices for one year and until their successors shall be elected; provided, that the same person shall not be elected President two years in succession.

Sec. 4. The duties of officers shall be such as usually devolve upon

such positions, and may be regulated and prescribed from time to time by the Constitution, By-Laws or resolutions of the Association.

Sec. 5. The Board of Directors shall have exclusive authority, and shall exercise executive supervision over the affairs of the Association between its meetings.

Sec. 6. Vacancies in the offices and Board of Directors shall be filled by the Board, the concurrence of a majority of whom shall be necessary to a choice.

#### ARTICLE IV.

##### COMMITTEES.

Section 1. The following committees shall be appointed annually by the President for the year ensuing, and shall consist of five members each: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admissions to the Bar; on Criminal Law and Criminal Procedure; on Commercial Law; on Publication; on Grievances and Discipline.

Sec. 2. A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee, be proper.

#### ARTICLE V.

##### GENERAL POWERS.

Section 1. This Association shall have power to impose fines, assess fees, and establish by-laws for its government. It shall have power to remove officers and suspend or expel members for good cause, upon written charges exhibited against them by a member, and due notice given of the charges and of the time they will be brought before the Association.

Sec. 2. The By-Laws shall prescribe the assessment to be levied on the members for the support of the Association and the promotion of its object.

#### ARTICLE VI.

##### QUORUM.

Section 1. Twenty-five members in regular standing shall constitute a quorum for the transaction of business.

#### ARTICLE VII.

##### GENERAL ADDRESSES.

Section 1. The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such

changes as affect the development and progress of the law and the administration of justice.

## ARTICLE VIII.

### MEETINGS.

Section 1. The time and place for holding the annual meeting shall be determined by the Board of Directors and announcement thereof made to the Association sixty (60) days in advance of the date of such meeting.

## ARTICLE IX.

### AMENDMENTS.

Section 1. All propositions to alter, amend or add to this Constitution shall be made in writing at a meeting of the Association and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two-thirds of the members present.

## ARTICLE X.

### DUES.

Section 1. Each member of the Association shall pay to the Secretary the sum of \$2.50 as annual dues.

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## BY-LAWS.

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## ARTICLE I.

### PRESIDING OFFICERS.

Section 1. The President, and in his absence the Vice-President, shall preside at all meetings of the Association; if neither of these officers be present, a President pro tem. shall be chosen by and from the attending members.

## ARTICLE II.

### ADDRESS AND ESSAYS.

Section 1. The Board of Directors, at its first meeting after each annual meeting, shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers.

## ARTICLE III.

### ANNUAL MEETING AND ORDER OF BUSINESS.

Section 1. The order of exercises at the annual meeting shall be as follows:

1. Opening address of the President.
2. Nominations and election of members.
3. Report of the Board of Directors.

4. Election of the Board of Directors.
5. Reports of Secretary and Treasurer.
6. Reports of Standing Committees, as follows: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publication; on Grievances and Discipline.
7. Reports of special committees.
8. Nomination of officers.
9. Miscellaneous business.
10. Election of officers.
11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.

Sec. 2. This order of business may be changed at any meeting by a vote of a majority of the members present; and except otherwise provided by the Constitution and By-Laws, the usual parliamentary rules and orders will govern the proceedings.

Sec. 3. No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

Sec. 4. A stenographer shall be employed at each annual meeting.

Sec. 5. Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

Sec. 6. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and proceedings of the annual meetings shall be printed, but no other address made or paper read or presented shall be printed except by order of the Committee on Publication.

Sec. 7. The Board of Directors shall, as soon as parties have been selected to deliver the annual address and read essays, notify the Secretary of this Association of such selections, and of any other matters of special interest to be brought before the next annual meeting.

Sec. 8. The Secretary shall be and is hereby required to mail each member of the Association, ten days before each annual meeting, a written or printed notice of the time and place of such meeting, giving a statement of the addresses to be delivered, the papers to be read, and other matters of special interest, and shall also cause such notice to be published.

#### ARTICLE IV.

##### MEMBERSHIPS AND DUES.

Section 1. The initiation fee to entitle a person to membership shall be \$5.00 which shall include the annual dues for the first year.

Sec. 2. The annual dues shall be payable at the annual meeting,

in advance, and should any member neglect to pay them for one year at or before the next annual meeting, he shall cease to be a member. The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

## ARTICLE V.

### OFFICERS AND COMMITTEES.

Section 1. The terms of office of all officers elected at the annual meeting shall commence at adjournment thereof, except the Board of Directors, whose term of office shall commence immediately upon their election.

Sec. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the person appointed. The Committee on Publication shall be appointed on the first day of each meeting.

Sec. 3. The Secretary and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

Sec. 4. The Board of Directors and all standing committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hours as their respective chairman shall appoint, and should any member of any committee be absent, the vacancy may be filled by the members of the committees present.

Sec. 5. The Committee on Publication shall meet within one month after each annual meeting at such time and place as the chairman shall appoint.

Sec. 6. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

Sec. 6a. It shall be the duty of the President to use every possible means to ascertain the death of any member of the Association, and, when such death is ascertained, it shall be his duty to seek for a personal friend of the deceased who would be a proper committeeman, and to add such friend to the Committee on Deceased Members.

It shall further be the duty of the President to draft bills upon all measures which are unanimously recommended by the Association, and to present such bills to the Legislature for enactment into laws; and the President, in his Annual Address, shall report to the Association how he has fulfilled this obligation.

## ARTICLE VI.

### STANDING COMMITTEES.

Section 1. It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments to the law as in its opinion should be adopted; also to



scrutinize proposed changes in the law, and, when necessary, report upon the same.

Sec. 2. It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical working of the judicial system of the State, and recommend, by written or printed report, from time to time, any changes therein which observation and experience may suggest.

Sec. 3. It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means of promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualifications for admission to the Bar, and the best means for accomplishing that object.

Sec. 4. It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

Sec. 5. The Committee on Publication shall pass upon and have printed all papers, should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

Sec. 6. The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of the Association. All complaints against any member of this Association shall be presented to this committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same; and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association; of all of which the complainant shall be notified by the committee.

## ARTICLE VII.

### RESOLUTIONS.

Section 1. No resolutions complimentary to any officer or member, for any service performed, paper read or address delivered, shall be considered by this Association.

## ARTICLE VIII.

### AMENDMENTS.

Section 1. These By-Laws may be amended at any meeting of the Association by a vote of two-thirds of those present; provided that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

## PRESIDENTS of THE TEXAS BAR ASSOCIATION

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Thomas J. Devine, San Antonio.....	1882
T. N. Waul, Galveston.....	1882-83
J. H. McLeary, San Antonio.....	1883-84
B. H. Bassett, Brenham.....	1884-85
A. J. Peeler, Austin.....	1885-86
T. J. Beall, El Paso.....	1886-87
W. L. Crawford, Dallas.....	1887-88
F. Charles Hume, Galveston.....	1888-89
H. W. Lightfoot, Paris.....	1889-90
Norman G. Kittrell, Houston.....	1890-91
Seth Sheperd, Dallas.....	1891-92
John N. Henderson, Bryan.....	1892-93
S. C. Padelford, Cleburne.....	1893-94
Thomas H. Franklin, San Antonio.....	1894-95
William L. Prather, Waco.....	1895-96
William H. Clark, Dallas.....	1896-97
William Aubrey, San Antonio.....	1897-98
Frank C. Dillard, Sherman.....	1898-99
Presley K. Ewing, Houston.....	1899-1900
M. A. Spoons, Fort Worth.....	1900-01
James B. Stubbs, Galveston.....	1901-02
Lewis R. Bryan, Houston.....	1902-03
T. S. Reese, Hempstead.....	1903-04
H. C. Carter, San Antonio.....	1904-05
H. M. Garwood, Houston.....	1905-06
A. L. Beaty, Sherman.....	1906-07
A. E. Wilkinson, Austin.....	1907-08
Yancey Lewis, Dallas.....	1908-09
William H. Burges, El Paso.....	1909-10
Hiram Glass, Texarkana.....	1910-11
R. E. L. Saner, Dallas.....	1911-12
John T. Duncan, LaGrange.....	1912-13
W. W. Searcy, Brenham.....	1913-14
Allan D. Sanford, Waco.....	1914-15
John L. Dyer, El Paso.....	1915-16
Frank C. Jones, Houston.....	1916-17
Chas. K. Lee, Fort Worth.....	1917-18
Cecil H. Smith, Sherman.....	1918-19

## ANNUAL ADDRESSES

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- 1883—Mr. Richard S. Walker, of Austin:  
    "The Bench and Bar in the Early Days of Texas."
- 1884—Mr. B. H. Bassett, of Brenham:  
    "The Lawyer as a Citizen."
- 1886—Mr. Sawmie Robertson, of Dallas:  
    "The Death of Chancery."
- 1887—Mr. C. C. Garrett, of Brenham:  
    "Conflict Between State and Federal Courts as to Jurisdiction  
    of the Former Over Non-Residents."
- 1888—Mr. F. Charles Hume, of Galveston:  
    "Execution Process; Should the Legislature Extend It?"
- 1889—Mr. S. B. Maxey, of Paris:  
    "The Federal Constitution."
- 1893—Mr. Thomas H. Franklin, of San Antonio:  
    "Judicial Centralization."
- 1894—Mr. B. D. Tarleton, of Fort Worth:  
    "Some Reflections on the Relations of Capital and Labor."
- 1895—Mr. O. M. Roberts, of Austin:  
    "The Right and Duty of Coinage by the United States."
- 1896—Mr. Seymour D. Thompson, of Missouri:  
    "Government by Lawyers."
- 1897—Mr. N. W. Finley, of Dallas:  
    "Trusts, Combination and Conspiracies in Restraint of  
    Trade."
- 1898—Mr. Sam J. Hunter, of Fort Worth:  
    "Life Tenures of Office in a Republican Government."
- 1899—Mr. F. Charles Hume, of Galveston:  
    "The Supreme Court of the United States."
- 1900—Mr. William Wirt Howe, of New Orleans:  
    "Roman and Civil Law in the Three Americas."
- 1904—Mr. Robert G. Street, of Galveston:  
    "Sovereignty."
- 1905—Mr. T. J. Brown, of Austin:  
    "Our State Judiciary."

- 1906—Justice David J. Brewer, of Washington:  
 "Two Periods in the History of the Supreme Court."
- 1907—Mr. Yancey Lewis, of Dallas:  
 "Institutional Changes."
- 1908—Mr. M. L. Crawford, of Dallas:  
 "The Supreme Court of Texas."
- 1909—Mr. W. C. Fitts, of Mobile, Alabama:  
 "Enforcement of Law and an Independent Judiciary."
- 1910—Mr. George R. Peck, of Chicago, Illinois:  
 "The Growth of Institutional Government."
- 1911—Mr. Martin W. Littleton, of New York City:  
 "Structural and Economic Changes."
- 1912—Mr. Albert W. Biggs, of Memphis, Tennessee:  
 "The Unrest as to the Administration of Law."
- 1913—Judge Nelson Phillips, of Austin:  
 "The Bar as an Institution of the State."
- 1914—Mr. Hannis Taylor, of Washington, D. C.:  
 "The Roman Law in the New World."
- 1916—Mr. S. T. Bledsoe, of Chicago, Illinois.
- 1917—Mr. G. B. Rose, of Little Rock, Arkansas.
- 1918—Dr. Roscoe Pound, Cambridge, Massachusetts.  
 "Judicial Organization."

PROCEEDINGS OF THE  
PAPERS READ

---

- 1883—Mr. A. J. Peeler, of Austin:  
"Rights of Land Owners in Texas to Protection Against Governmental and Individual Aggression in the Use and Enjoyment of Their Property."
- 1883—Mr. Robert G. Street, of Galveston:  
"Texas Pleadings."
- 1884—Mr. O. M. Roberts, of Austin:  
"Legal Education and Admission to the Bar."
- 1889—Mr. O. M. Roberts, of Austin:  
"Law and Pleading."
- 1890—Mr. B. H. Bassett, of Dallas:  
"The Model Brief."
- 1891—Mr. J. M. Avery, of Dallas:  
"Liability of an Organizer of a Corporation for Its Acts."
- 1892—Mr. C. C. Garrett, of Brenham:  
"Limitations of Actions When There Is a Trustee Authorized to Sue."
- 1892—Mr. S. C. Padelford, of Cleburne:  
"Government."
- 1893—Mr. H. Teichmueller, of LaGrange:  
"The Homestead Law."
- 1893—Mr. T. S. Reese, of Hempstead:  
"Criminal Law."
- 1893—Mr. John G. Winter, of Waco:  
"Community Law."
- 1893—Mr. Richard Morgan, of Dallas:  
"Receiverships."
- 1893—Mr. James G. Scott, of Fort Worth:  
"Private Corporations."
- 1894—Mr. E. B. Perkins, of Greenville:  
"The Statutory Craze."
- 1894—Mr. Robert G. Street, of Galveston:  
"Medical Jurisprudence."
- 1894—Mr. Edwin Hobby, of Houston:  
"The Legal Profession; Its Value, Importance and Influence."
- 1894—Mr. Charles S. Todd, of Texarkana:  
"Assignments for the Benefit of Creditors."
- 1894—Mr. Norman G. Kittrell, of Houston:  
"The Criminal Law of Texas and Its Administration."
- 1894—Mr. T. H. Connor, of Eastland:  
"Juries and Jury Trials."
- 1894—Mr. T. F. Harwood, of Gonzales:  
"The Respect Due by Members of the Bar to the Judiciary."

- 1895—Mr. George W. Davis, of Dallas:  
    "Texas Pleadings."
- 1895—Mr. William H. Clark, of Dallas:  
    "Deeds of Trust Preferring Creditors."
- 1895—Mr. John G. Tod, of Houston:  
    "Administration of Community Property by the Survivor."
- 1895—Mr. R. L. Batts, of the University of Texas:  
    "Some Reflections Concerning Legal Education."
- 1896—Mr. E. J. Simkins, of Dallas:  
    "Proper Subjects of Legislation."
- 1896—Mr. F. W. Ball, of Fort Worth:  
    "A Desultory Denunciation of Texas Law and Procedure."
- 1896—Mr. H. Teichmueller, of LaGrange:  
    "Judge and Jury."
- 1896—Mr. A. E. Wilkinson, of Denison:  
    "A Review of Some Recent Noteworthy Decisions by the  
        Higher Courts of Texas."
- 1896—Mr. John Dowell, of Austin:  
    "The Symbolism of Commerce—Trade Mark."
- 1897—Mr. Leroy G. Denman, of San Antonio:  
    "Our Present Judicial System; Its Advantages and Defects."
- 1897—Mr. Joseph Spence, Jr., of San Angelo:  
    "A Review of Recent Noteworthy Decisions of the Higher  
        Courts of Texas."
- 1897—Mr. M. A. Spoons, of Fort Worth:  
    "A Divided Allegiance."
- 1897—Mr. Presley K. Ewing, of Houston:  
    "The De Facto Wife."
- 1897—Mr. William Aubrey, of San Antonio:  
    "Mob Law."
- 1897—Mr. B. R. Webb, of Fort Worth:  
    "Some Needed Reforms in Our Real Estate Laws."
- 1898—Mr. Norman G. Kittrell, of Houston:  
    "Needed Reforms in the Assessment and Collection of Taxes."
- 1898—Mr. George E. Miller, of Wichita Falls:  
    "Some Features of the Uniform Bankruptcy Law."
- 1898—Mr. Jonathan Lane, of LaGrange:  
    "Our Courts."
- 1898—Mr. W. A. Kincaid, of Galveston:  
    "In the Known Certainty of the Law Is the Safety of All."
- 1898—Mr. B. R. Webb, of Fort Worth:  
    "A Review of Recent Noteworthy Decisions of the Higher  
        Courts of Texas."
- 1899—Mr. T. S. Reese, of Galveston:  
    "A Plea for Exactness and Certainty of the Law."

- 1899—Mr. Edward F. Harris, of Galveston:  
    "Some Recent Noteworthy Decisions in Civil Cases by the  
    Higher Courts of Texas."
- 1899—Mr. W. C. Wear, of Hillsboro:  
    "Admission to the Bar."
- 1899—Mr. Phillip Lindsley:  
    "Humorous Report of Annual Meeting of the Tennessee State  
    Bar Association."
- 1900—Mr. J. B. Dibrell, of Seguin:  
    "The Legislative Function."
- 1900—Mr. J. A. Holland, of Orange:  
    "The White Man's Burden from a Legal Standpoint."
- 1900—Mr. A. E. Wilkinson, of Austin:  
    "Law and Literature."
- 1900—Mr. Edwin B. Parker, of Houston:  
    "Anti-Railroad Personal Injury Litigation in Texas."
- 1901—Mr. John G. Tod, of Houston:  
    "Recent Noteworthy Decisions of the Texas Courts."
- 1901—Mr. Norman G. Kittrell, of Houston:  
    "The Barker Case."
- 1902—Mr. Maco Stewart, of Galveston:  
    "The Story of a Land Title."
- 1902—Mr. John Charles Harris, of Houston:  
    "Trial by Jury in Civil Causes."
- 1902—Mr. Yancey Lewis, of the University of Texas:  
    "The Rights of Riparian Owners in the Matter of Irrigation."
- 1903—Mr. John N. Henderson, of Bryan:  
    "The Pardoning Power, Its Uses and Abuses."
- 1903—Mr. John C. Townes, of Austin:  
    "Courses of Study in Law Pursued in the State University."
- 1903—Mr. John C. Walker, of Galveston:  
    "Some Peculiarities of the Admiralty Law."
- 1903—Mr. William D. Williams, of Fort Worth:  
    "The Taxation of Intangibles."
- 1903—Mr. C. F. Greenwood, of Hillsboro:  
    "Will Injunction Lie to Restrain the Local Option Law From  
    Going Into Effect?"
- 1903—Mr. S. J. Brooks, of San Antonio:  
    "The Increase of Litigation in Cities and Some Suggested  
    Amendments to the Practice Act."
- 1904—Mr. Charles K. Bell, of Fort Worth:  
    "Certain Needed Reforms."
- 1904—Mr. Edward F. Harris, of Galveston:  
    "Review of Recent Noteworthy Decisions."
- 1904—Mr. Alfred E. Wilkinson, of Austin:  
    "The Legal Mind."

- 1904—Mr. A. L. Beaty, of Sherman :  
     "Impeaching the Verdict of the Jury."
- 1904—Mr. John C. Walker, of Galveston :  
     "The Harter Act."
- 1904—Mr. W. M. Coldwell, of El Paso :  
     "Growth of Central Power in the United States."
- 1904—Mr. Clarence H. Miller, of Austin :  
     "Our Lawmakers, the Judges."
- 1904—Mr. Ocie Speer, of Bowie :  
     "The 'Texas Rule' in Irrigation."
- 1904—Mr. Thomas Shearon, of Dallas :  
     "The Vendor's Lien in Texas; An Historical Essay."
- 1904—Mr. Lewis Fisher, of Galveston :  
     "Needed Amendments of Probate Law."
- 1905—Mr. W. J. Moroney, of Dallas :  
     "How to Reform Our Civil Procedure."
- 1905—Mr. M. H. Gossett, of Dallas :  
     "Alien and Corporate Ownership of Land in Texas."
- 1905—Mr. R. B. Webb, of Fort Worth :  
     "C. O. D. Sales of Intoxicating Liquors."
- 1905—Mr. William H. Burges, of El Paso :  
     "A Comparative Study of the Constitution of the United  
         States of Mexico and the United States of America."
- 1905—Mr. Nelson Phillips, of Dallas :  
     "A Great English Lawyer."
- 1905—Mr. B. D. Tarlton, of Austin :  
     "The Texas Homestead Exemption."
- 1905—Mr. John N. Henderson, of Bryan :  
     "The Old Court of Criminal Appeals and Its Work."
- 1906—Mr. U. M. Rose, of Little Rock, Arkansas :  
     "The Code Napoleon."
- 1906—Mr. R. G. Street, of Galveston :  
     "Evolution of Law."
- 1906—Mr. Jordan F. Sellers, of Morrilton, Arkansas :  
     "Trade Monopolies and Their Legal Restraint."
- 1906—Mr. Seldon P. Spencer, of St. Louis, Missouri :  
     "Lawlessness and Lawyers."
- 1906—Mr. Lewis Rhoton, of Little Rock, Arkansas :  
     "The Law of Bribery."
- 1906—Mr. T. W. Gregory, of Austin :  
     "The Origin and Growth of the Ku Klux Klan."
- 1906—Mr. Sam B. Dabney, of Houston :  
     "A Criticism of the Organization of Our Courts and a Theory  
         for Their Reorganization."
- 1906—Mr. William B. Smith, of Little Rock, Arkansas :  
     "Bills of Lading as Collateral Security."



- 1907—Mr. Edgar Watkins, of Houston:  
    "Should the Legal Status of the Negro Be Changed?"
- 1907—Mr. W. M. Holland, of Dallas:  
    "Liability of Trusts for Private Wrongs."
- 1907—Mr. John Charles Harris, of Houston:  
    "Legal Ethics."
- 1907—Mr. Robert A. John, of Beaumont:  
    "Uniform Legislation."
- 1907—Mr. Thomas H. Franklin, of San Antonio:  
    "The Honor of the Bar."
- 1908—Mr. John T. Duncan, of LaGrange:  
    "Is the Statute Constitutional Which Authorizes Notaries  
    Public to Fine and Imprison Witnesses Who Refuse to  
    Answer Interrogatories?"
- 1908—Mr. J. C. Crisp, of Beeville:  
    "Needed Regulation of the Abstract of Title Business."
- 1908—Mr. John G. Winter, of Waco:  
    "Examination of Witnesses."
- 1908—Mr. Hiram Glass, of Texarkana:  
    "Railroads—National vs. State Control."
- 1908—Mr. A. E. Wilkinson, of Austin:  
    "Enforcing Competition by Law."
- 1909—Mr. R. L. Batts, of Austin:  
    "The Inefficiency of the Administration of the Law."
- 1909—Mr. R. B. Levy, of Texarkana:  
    "Criminal Laws of an Early Period."
- 1909—Mr. S. P. Jones, of Marshall:  
    "Unreasonable Delays in the Final Disposition of Civil Suits."
- 1910—Mr. Allan D. Sanford, of Waco:  
    "The Lawyer in History."
- 1910—Mr. Lewis M. Dabney, of Dallas:  
    "Pleading and Practice in the Land of Canaan."
- 1910—Mr. Charles W. Ogden, of San Antonio:  
    "The Honorarium."
- 1911—Mr. William Hodges, of Texarkana:  
    "Judicial Reform in Texas."
- 1911—Mr. Ben G. Kendall, of Waco:  
    "A Sketch of John Marshall."
- 1911—Mr. H. N. Atkinson, of Houston:  
    "Some Results of Holding the Legal Intellect in Mortmain."
- 1912—Mr. Thomas H. Franklin, of San Antonio:  
    "The Recall of Judges."
- 1912—Mr. William H. Wilson, of Houston:  
    "Incorporation of Trading Companies Engaged in Interstate  
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- 1912—Mr. Maco Stewart, of Galveston:  
     "Breen vs. Morehead, 136 S. W. Rep., 147."
- 1912—Mr. John M. Spellman, of Dallas and Chicago:  
     "Patent Laws."
- 1913—Mr. W. C. Morrow, of Hillsboro:  
     "Judicial Reform in Texas."
- 1913—Mr. O. L. Stribling, of Waco:  
     "The Right of Trial by Jury in Civil Cases Should Be Abolished."
- 1913—Mr. C. A. Teagle, of Houston:  
     "Recent Noteworthy Decisions."
- 1913—Mr. C. M. Smithdeal, of Dallas:  
     "On the Necessity for Amending the Judicial Article of the Constitution."
- 1914—Mr. Rome G. Brown, of Minneapolis, Minnesota:  
     "Muckraking the Constitution."
- 1914—Mr. James D. Walthall, of San Antonio:  
     "The Selection of Judges."
- 1915—Judge Erwin J. Clark, of Waco:  
     "Recent Noteworthy Decisions."
- 1915—Mr. Harry P. Lawther, of Dallas:  
     "The Texas Employers' Liability Act."
- 1915—Mr. F. C. Dillard, of Sherman:  
     "The Meaning of the Unrest in Things Political and Economic."
- 1915—Mr. Carlos Bee, of San Antonio:  
     "The Progress of the Law in Modern Industrial Conditions."
- 1916—Mr. Tom J. Lee, of San Antonio:  
     "Some Phases of International Law Relating to Claims of Citizens for Indemnity, Resulting from Revolutionary Conditions in Mexico."
- 1916—Mr. R. L. Batts, of Austin:  
     "Some Undetermined Aspects of the Federal Anti-Trust Laws."
- 1916—Mr. Wm. H. Wilson, of Houston:  
     "Primary Elections as an Instrument of Popular Government."
- 1916—Mr. W. L. Estes, of Texarkana:  
     "Roger B. Taney."
- 1916—Mr. A. E. Wilkinson, of Austin:  
     "The Author of the Texas Homestead Exemption Law."
- 1916—Mr. S. T. Bledsoe, of Chicago, Illinois:  
     "The Commerce Clause of the Federal Constitution and Legislation Enacted Pursuant Thereto, Applicable to Railway Transportation."
- 1916—Judge F. A. Williams, of Galveston:  
     "What Can Be Done to Aid the Supreme Court?"

1917—Mr. J. M. Burford, of Texarkana:

“The Dignity of Court Rules in Appellate Procedure.”

1917—Hon. T. H. McGregor, Austin:

“Employers’ Liability Act.”

1918—Hon. Hiram Glass, of Austin:

“History and Purposes of the American Bar Association.”

1918—Hon. A. H. McKnight, of Dallas:

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1918—Hon. W. O. Hart, of New Orleans, Louisiana:

“Uniformity of Legislation.”

## LIST OF MEMBERS

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1914—Adams, Jed C.....	Dallas
1912—Adams, J. T.....	Orange
1914—Adams, S. P.....	Dallas
1918—Akin, J. W.....	Wichita Falls
1918—Allday, Martin L.....	Burkburnett
1914—Allen, A. C.....	Dallas
1883—Allen, W. H.....	Dallas
1908—Allen, W. T.....	Henrietta
1896—Allen, W. P.....	Austin
1912—Amerman, A. E.....	Houston
1916—Anderson, Frank S.....	Galveston
1911—Anderson, J. H.....	Marlin
1907—Anderson, Geo. D.....	Beaumont
1910—Anderson, W. A.....	San Angelo
1900—Andrews, Frank .....	Houston
1906—Armistead, W. T.....	Jefferson
1900—Armstrong, W. T.....	Galveston
1910—Arnold, G. S.....	Bronte
1904—Ashe, Chas. E.....	Houston
1911—Atkinson, J. B.....	Houston
1910—Atwell, Wm. H.....	Dallas
1911—Aubrey, Llewellyn .....	Waco
1884—Aubrey, Wm.....	San Antonio
1912—Austin, Wm. E.....	Bay City
1882—Autry, Jas. L.....	Houston
1910—Autry, S. C.....	San Angelo
1891—Avery, J. M.....	Dallas
1916—Ayers, Lee C.....	Houston
1912—Aynesworth, Jos. H.....	Childress
1904—Bailey, Edw. H.....	Houston
1910—Bailey, W. S.....	Houston
1916—Bailey, Jos. W.....	Washington, D. C.
1911—Baker, E. B.....	Waco
1916—Baker, Jr., G. C.....	Richmond
1882—Baker, Jas. A.....	Houston
1910—Baker, J. K.....	Coleman
1902—Baker, Rhodes S.....	Dallas
1898—Baldwin, J. C.....	Houston
1917—Baldwin, F. T.....	Houston
1884—Ball, Robt. L.....	San Antonio
1894—Ball, Thos. H.....	Houston
1906—Ballew, W. W.....	Corsicana

1912—Barkley, K. C.....	Houston
1915—Barrett, A. P.....	San Antonio
1914—Barrett, Thurman .....	San Antonio
1907—Barry, H. P.....	Beaumont
1905—Bartell, Chas. ....	Sherman
1902—Bartlett, F. W.....	Dallas
1909—Barton, A. M.....	Palestine
1906—Barwise, J. H., Jr.....	Fort Worth
1912—Bassett, W. H.....	Brenham
1910—Baten, Thos. J.....	Beaumont
1915—Bates, C. L.....	San Antonio
1914—Bates, W. M.....	Dallas
1903—Bates, Wharton .....	Houston
1895—Batts, R. L.....	Austin
1908—Baughn, M. H.....	Mineral Wells
1914—Beall, Jack .....	Dallas
1886—Beall, T. J.....	El Paso
1902—Beaty, A. L.....	New York City
1904—Beaty, Jno. T.....	Jasper
1915—Bebout, G. N.....	Waco
1899—Bee, Carlos .....	San Antonio
1897—Bell, A. J.....	San Antonio
1906—Benefield, J. H.....	Jefferson
1917—Berry, E. A.....	Austin
1903—Berry, W. C.....	San Antonio
1818—Bibb, W. Lindsay.....	Wichita Falls
1911—Binkley, Thos. G.....	Temple
1915—Birkhead, Claude V.....	San Antonio
1907—Bisland, J. B.....	Orange
1915—Black, C. L.....	Austin
1910—Blalock, W. C., Jr.....	Fort Worth
1917—Blankenbecker, L. E.....	New York City
1918—Blankenship, J. M.....	Wichita Falls
1910—Blanks, W. C.....	San Angelo
1910—Blanton, Thos. L.....	Abilene
1914—Bleker, J. W.....	Dallas
1905—Bliss, Don A.....	San Antonio
1907—Blount, S. W.....	Nacogdoches
1905—Bondies, Harry R.....	Sweetwater
1914—Bonner, Wm. N.....	Wichita Falls
1904—Boone, Gordon .....	Corpus Christi
1918—Boone, T. R.....	Wichita Falls
1912—Botts, Thos. B.....	Brenham
1904—Botts, Thos. H.....	Houston
1912—Bowers, Richard S.....	Caldwell
1912—Bowers, Wm. O.....	Giddings

1911—Bowman, L. L.....	Greenville
1908—Boyle, R. J.....	San Antonio
1903—Bradley, C. S.....	Groesbeck
1905—Bradley, Tom C.....	Fort Worth
1909—Brady, John W.....	Austin
1914—Bramlett, W. S.....	Dallas
1912—Branch, E. T.....	Houston
1908—Bratton, R. E.....	Fort Worth
1916—Brigance, A. F.....	Navasota
1912—Briggs, Clay S.....	Galveston
1914—Briggs, M. B.....	Gilmer
1915—Briscoe, John T.....	Devine
1916—Britain, A. H.....	Wichita Falls
1908—Bromberg, H. L.....	Dallas
1918—Brooks, E. T.....	Anson
1904—Brooks, M. M.....	Dallas
1905—Brooks, S. J.....	San Antonio
1902—Browder, Edw. M.....	Dallas
1915—Brown, Miss Irene G.....	San Antonio
1916—Brown, Marvin H.....	Fort Worth
1910—Brown, R. T.....	Henderson
1891—Bryan, Lewis R.....	Houston
1908—Bryan, Morgan .....	Fort Worth
1907—Bruce, E. L.....	Orange
1914—Bryant, W. R.....	Dallas
1909—Buckley, W. F.....	Tampico, Mex.
1918—Bullington, Orville .....	Wichita Falls
1905—Burford, A. L.....	Texarkana
1896—Burges, R. F.....	El Paso
1910—Burges, A. R.....	San Angelo
1903—Burges, Wm. H.....	El Paso
1912—Burgess, Geo. T.....	Dallas
1915—Burgess, J. L.....	Dallas
1917—Burnett, Fred C.....	.....
1903—Burney, R. H.....	Kerrville
1915—Burney, H. P.....	San Antonio
1912—Butler, C. T.....	Beaumont
1917—Cain, C. H.....	Liberty
1907—Calhoun, A. L.....	Beaumont
1916—Campbell, E. R.....	Houston
1910—Campbell, Joab .....	Eldorado
1902—Campbell, T. M.....	Palestine
1915—Canfield, J. E.....	Floresville
1898—Cantey, S. B.....	Fort Worth
1916—Canty, J. C.....	Galveston
1908—Capps, Wm. ....	Fort Worth
1914—Carden, D. F.....	Dallas

1915—Carl, John Franklin.....	San Antonio
1895—Carlton, L. A.....	Houston
1912—Carpenter, H. L.....	Greenville
1905—Carpenter, Lewis T.....	Phoenix, Arizona
1912—Carpenter, W. C.....	Bay City
1918—Carrigan, A. H.....	Wichita Falls
1894—Carswell, R. E.....	Decatur
1913—Carter, Champe Goodwyn.....	San Antonio
1915—Carter, Claud J.....	San Antonio
1903—Carter, C. L.....	Houston
1911—Carter, Geo. H.....	Marlin
1894—Carter, H. C.....	San Antonio
1915—Carter, Randolph L.....	San Antonio
1909—Cartledge, E.....	Austin
1909—Cave, J. B.....	Dallas
1908—Cavin, E. D.....	Galveston
1906—Chambers, C. M.....	San Antonio
1905—Chambers, E. S.....	Clarksville
1918—Chauncey, W. B.....	Wichita Falls
1898—Childs, J. D.....	San Antonio
1916—Chrestman, M. N.....	Dallas
1915—Clark, Erwin J.....	Waco
1886—Clark, Wm. H.....	Dallas
1914—Cleaves, W. M.....	Houston
1911—Cline, H. A.....	Wharton
1906—Clough, G. G.....	Galveston
1911—Cocke, J. Walter.....	Waco
1896—Cockrell, Joe E.....	Dallas
1913—Cody, T. H.....	Georgetown
1914—Cofer, N. G.....	Dallas
1912—Coke, Alex S.....	Dallas
1886—Coke, Henry C.....	Dallas
1904—Coldwell, W. M.....	El Paso
1917—Cole, Robt. L.....	Houston
1907—Colgin, E. B.....	Houston
1910—Collins, Alex.....	San Angelo
1907—Collins, V. A.....	Beaumont
1908—Collins, Walter.....	Hillsboro
1907—Conley, Jno. M.....	Beaumont
1910—Connerly, Fred T.....	Austin
1898—Connerly, R. H.....	Austin
1905—Connor, E. S.....	Paris
1913—Cook, W. L.....	Houston
1914—Cooke, Clay.....	Pecos
1907—Cooper, S. B., Jr.....	Beaumont
1907—Cope, G., T.....	Fort Worth
1914—Corley, Q. D.....	Dallas

1910—Cornell, James .....	Sonora
1909—Cox, John R. ....	Houston
1911—Cox, M. G. ....	Cameron
1918—Cox, P. B. ....	Wichita Falls
1913—Cox, T. M. ....	Beeville
1914—Crane, Edward .....	Dallas
1902—Crane, M. M. ....	Dallas
1914—Crane, Martin .....	Dallas
1910—Crane, R. C. ....	Sweetwater
1902—Crawford, M. L., Jr. ....	Dallas
1882—Crawford, W. L. ....	Dallas
1914—Crawford, W. L., Jr. ....	Dallas
1902—Crawford, Walter J. ....	Beaumont
1893—Crisp, J. C. ....	Beeville
1903—Crook, W. M. ....	Beaumont
1916—Crooker, Chas. C. ....	Houston
1916—Crooker, John H. ....	Houston
1914—Croom, C. W. ....	El Paso
1882—Culberson, Chas. A. ....	Dallas
1908—Cummings, B. Y. ....	Hillsboro
1912—Cunningham, B. J. ....	Galveston
1907—Dabney, J. F. ....	Liberty
1910—Dabney, Lewis M. ....	Dallas
1905—Dabney, S. B. ....	Houston
1910—Dalton, C. T. ....	San Angelo
1912—Daniel, R. L. ....	Victoria
1909—Dannelley, J. L. ....	Dallas
1904—Dannenbaum, H. J. ....	Houston
1918—Darden, J. W. ....	Clairemont
1912—Darrrouzet, J. L. ....	Galveston
1912—Darst, Harris P. ....	Richmond
1907—Davenport, J. R. ....	Houston
1918—Davenport, John .....	Wichita Falls
1910—Davidson, C. E. ....	Ozona
1882—Davidson, R. V. ....	Dallas
1916—Davidson, T. W. ....	Marshall
1912—Davidson, W. L. ....	Austin
1915—Davies, C. A. ....	San Antonio
1911—Davis, John .....	Dallas
1911—Davis, John W. ....	Waco
1903—Davis, M. W. ....	San Antonio
1905—Dean, A. R. ....	Muskogee, Okla.
1918—Dean, S. W. ....	Navasota
1912—Dean, W. L. ....	Huntsville
1917—DeBogory, E. ....	Dallas
1912—Dedmon, Perry G. ....	Fort Worth
1916—DeLange, Albert .....	Galveston



1915—Denman, Leroy G., Jr.	San Antonio
1913—Deutschman, Selig	San Antonio
1916—Dibrell, C. G.	Galveston
1889—Dibrell, Jos. B.	Seguin
1910—Dibrell, Jos. B., Jr.	Coleman
1913—Dickson, Chas. M.	San Antonio
1907—Dies, W. W.	Kountze
1895—Dillard, F. C.	Sherman
1905—Dillard, F. B.	Tulsa, Okla.
1911—Dilworth, Tom G.	Waco
1911—Dilworth, T. M.	Waco
1902—Dinsmore, James H.	Greenville
1910—Dinsmore, John P.	Greenville
1905—Dohoney, A. P.	Paris
1918—Donald, Paul	Bowie
1918—Dooley, J. B.	Amarillo
1909—Doom, D. H.	Austin
1906—Dorough, R. P.	Texarkana
1907—Dougherty, G. P.	Beaumont
1910—Dougherty, J. R.	Beeville
1914—Douthit, Ellis	Sweetwater
1907—Dowlin, P. A.	Beaumont
1910—Dubois, C. E.	San Angelo
1896—Duff, F. J.	Beaumont
1901—Duff, R. C.	Beaumont
1907—Duffy, M. S.	Beaumont
1910—Dumas, James P.	Austin
1917—Duncan, C. Douglas	Bellville
1897—Duncan, Jno. T.	LaGrange
1898—Dyer, Jno. L.	El Paso
1903—Eagle, Joe H.	Houston
1910—Early, W. U.	Brownwood
1907—Easterling, E. E.	Beaumont
1902—Eberhart, F. S.	Mineral Wells
1914—Eckford, J. J.	Dallas
1913—Eddins, John B.	Rockport
1914—Edwards, H. P.	Dallas
1896—Edwards, Peyton F.	El Paso
1915—Edwards, Raymond	San Antonio
1910—Eidson, A. R.	Hamilton
1913—Ellis, O.	Lockhart
1903—Eppstein, L. B.	New York
1914—Eskridge, Marshall	San Antonio
1905—Estes, W. L.	Texarkana
1913—Etheridge, F. M.	Dallas
1896—Evans, H. G.	Bonham
1911—Ewing, E. M.	Waco

1899—Ewing, Presley K.	Houston
1904—Feagin, J. C.	Livingston
1918—Felder, C. B.	Wichita Falls
1915—Fellbaum, Ernest	San Antonio
1906—Figueroes, W. B.	Atlanta
1903—Fisher, Lewis	Galveston
1916—Fisher, S. W.	Austin
1918—Fitzgerald, W. E.	Wichita Falls
1907—Fleming, J. V.	Beaumont
1915—Florea, J. C.	Richmond
1915—Fly, W. S.	San Antonio
1908—Ford, Frank J.	Decatur
1882—Ford, T. W.	Beaumont
1918—Forgy, W. E.	Archer City
1911—Foster, W. N.	Conroe
1893—Foster, Arthur C.	Rule
1913—Foster, John J.	Del Rio
1908—Francis, W. H.	Dallas
1908—Frank, D. A.	Dallas
1912—Franklin, R. W.	Houston
1884—Franklin, Thos. H.	San Antonio
1911—Frazier, A. M.	Hillsboro
1916—Fuller, Aubrey	Galveston
1905—Gafford, Ben F.	Sherman
1916—Gaines, C. M.	Bay City
1912—Gaines, John W.	Bay City
1911—Gallagher, J. N.	Waco
1905—Galloway, C. L.	El Paso
1914—Gamble, H. R.	El Paso
1911—Gammon, J. Lee	Waxahachie
1906—Garland, J. E.	Lamesa
1912—Garrett, D. E.	Houston
1912—Garrett, H. L.	Galveston
1910—Garrett, H. S.	Sweetwater
1907—Garrison, J. T.	Houston
1911—Garth, D. T.	Teague
1894—Garwood, H. M.	Houston
1911—Gary, Hampson	Cairo, Egypt
1913—George, John L.	San Diego
1914—German, S. H.	Livingston
1914—Germany, J. A.	Dallas
1916—Gibson, Barret	Galveston
1899—Gill, W. H.	Houston
1914—Gillbough, F. M.	Dallas
1914—Gillespie, J. P.	Dallas
1897—Glass, Hiram	Austin
1907—Glasscock, D. W.	McAllen

1903—Goeth, C. A.	San Antonio
1907—Goodrich, W. F.	Hemphill
1910—Goodwin, John W.	Brownwood
1907—Gordon, S. E.	Beaumont
1906—Gordon, W. D.	Beaumont
1902—Gossett, M. H.	Dallas
1910—Graham, N. W.	Ozona
1914—Grambling, A. R.	El Paso
1909—Graves, Ireland	Austin
1907—Graves, G. W.	Houston
1912—Green, John E., Jr.	Houston
1902—Greenwood, C. F.	Dallas
1917—Greenwood, T. B.	Wichita Falls
1918—Greenwood, Thos. B.	Palestine
1907—Greer, Geo. C.	Dallas
1898—Greer, R. A.	Beaumont
1915—Gregg, John G.	Galveston
1907—Gregory, T. W.	Washington, D. C.
1882—Gresham, Walter	Galveston
1904—Griner, J. G.	San Antonio
1910—Grogan, W. L.	Abilene
1911—Gross, Abe	Waco
1910—Guion, John I.	Ballinger
1917—Guynes, Chas. O.	Houston
1905—Haizlip, J. D.	Sherman
1905—Hale, Owen P.	Paris
1915—Hall, W. L.	Wharton
1904—Hamblen, E. P.	Houston
1904—Hamblen, Otis K.	Houston
1917—Hamilton, Dexter	Corsicana
1910—Hamilton, Edgar S.	San Angelo
1914—Hamilton, Oscar	Dallas
1908—Hanger, W. A.	Fort Worth
1918—Hankins, M. M.	Quanah
1908—Harding, W. L.	Waxahachie
1907—Hardy, D. H.	Houston
1910—Harp, D. Leon	Mexia
1911—Harper, Al. J.	El Paso
1908—Harper, Jas. R.	El Paso
1912—Harrell, Morris B.	Greenville
1910—Harris, C. O.	Ballinger
1892—Harris, Edw. F.	Galveston
1891—Harris, Jno. Chas.	Houston
1910—Harrison, G. N.	Brownwood
1907—Harrison, Jas. A.	Beaumont
1908—Harrison, Robt.	Fort Worth
1908—Hart, H. G.	Houston

1909—Hart, Jas. H.	Austin
1906—Hart, R. D.	Texarkana
1909—Hart, W. D.	Austin
1917—Harvey, J. D.	Houston
1882—Harwood, T. F.	Gonzales
1905—Hassell, J. W.	Denison
1914—Haven, J. P.	Denison
1897—Hawkins, E. A., Jr.	Los Angeles, Cal.
1915—Hawkins, L. D.	Austin
1909—Hawkins, Wm. E.	Austin
1905—Hay, W. L.	Sherman
1904—Head, Hayden W.	Sherman
1882—Hefley, W. T.	Cameron
1907—Hefner, R. A.	Beaumont
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1918—Henderson, Nat	Wichita Falls
1906—Henderson, J. M.	Daingerfield
1882—Henderson, T. S.	Cameron
1917—Hendricks, E. B.	Wichita Falls
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1913—Hertzberg, Harry	San Antonio
1903—Hicks, Marshall	San Antonio
1898—Hicks, Yale	San Antonio
1903—Hildebrand, Ira P.	Austin
1894—Hill, James E., Jr.	Livingston
1910—Hill, J. P.	San Angelo
1906—Hill, J. W.	San Angelo
1903—Hill, Sam'l F.	Livingston
1914—Hill, Thos. N.	Beaumont
1914—Hodges, S. H.	Wichita Falls
1909—Hodges, Wm.	Texarkana
1912—Holbrook, T. J.	Galveston
1912—Holiday, Robt. L.	El Paso
1902—Holland, W. M.	Dallas
1902—Holloway, Thos. T.	Dallas
1910—Holman, Wm. Shields	Bay City
1905—Holt, Jesse F.	Sherman
1908—Hord, H. C.	Sweetwater
1913—Hook, T. Wesley	Kingsville
1911—Hooser, E. H.	Gatesville
1882—Houston, Reagan	San Antonio
1917—Howard, Geo. F.	Austin
1910—Howard, Jno. B.	Pecos
1907—Howth, C. W.	Beaumont
1914—Huff, C. C.	Dallas
1918—Huff, R. E.	Wichita Falls
1897—Huff, S. P.	Amarillo

1910—Hughes, H. C.	Galveston
1896—Hughes, W. E.	Denver, Col.
1915—Hume, D. E.	Eagle Pass
1882—Hume, F. Chas.	Houston
1890—Hume, F. Chas., Jr.	Houston
1911—Humphrey, Leslie	Wichita Falls
1906—Humphrey, T. E.	Huntsville
1908—Hunt, G. D.	Dallas
1898—Hunt, W. S.	Houston
1918—Hunter, T. F.	Wichita Falls
1906—Hurley, J. A.	Texarkana
1911—Hutcheson, J. C., Jr.	Houston
1915—Hutcheson, W. P.	Houston
1911—Hutchings, T. C.	Mount Pleasant
1912—Huvelle, L. C.	Dallas
1903—Ingram, R. P.	San Antonio
1909—Isaacs, S. J.	El Paso
1914—Jackson, Dan M.	El Paso
1910—Jackson, Henry E.	San Angelo
1911—James, T. R., Jr.	Fort Worth
1918—Jaquet, S., Jr.	Houston
1910—Jenkins, C. H.	Austin
1897—Jester, C. L.	Corsicana
1907—John, Robt. A.	Houston
1908—Johnson, C. W.	Graham
1914—Johnson, F. E.	Cleburne
1895—Johnson, Marsene	Galveston
1909—Johnson, T. S.	Austin
1916—Johnson, Elmo	Galveston
1916—Johnson, Roy	Galveston
1916—Johnson, Marsene, Jr.	Galveston
1905—Jones, B. L.	Sherman
1898—Jones, F. C.	Houston
1918—Jones, F. S.	Wichita Falls
1910—Jones, Joseph	Del Rio
1916—Jones, Murray B.	Houston
1906—Jones, S. P.	Marshall
1915—Jones, Walter	Del Rio
1915—Jones, W. R.	Brownsville
1900—Jordan, H. P.	Waco
1912—Kampmann, I. S.	San Antonio
1908—Kay, John C.	Wichita Falls
1906—Keeling, W. A.	Austin
1909—Keller, Victor	San Antonio
1896—Kelley, G. G.	Wharton
1917—Kelley, R. H.	Houston
1907—Kelly, W. F.	Post City

1915—Kelso, Winchester .....	San Antonio
1910—Kemp, Maury .....	El Paso
1911—Kendall, B. G. ....	Waco
1917—Kennerly, T. M. ....	Houston
1906—Key, Scott W. ....	Stephenville
1894—Key, W. M. ....	Austin
1918—Kimbrough, W. H. ....	Amarillo
1912—Kincaid, John W. ....	Dallas
1912—King, Geo. S. ....	Nacogdoches
1910—King, Harry Tom .....	Abilene
1915—King, Henry C., Jr. ....	San Antonio
1905—King, John J. ....	Texarkana
1917—King, Jno. M. ....	Houston
1906—Kirby, A. H. ....	Fort Worth
1910—Kirk, W. W. ....	Plainview
1912—Kirlicks, John A. ....	Houston
1884—Kittrell, Norman G. ....	Houston
1904—Kittrell, Norman G., Jr. ....	Houston
1913—Kleberg, Edward R. ....	Corpus Christi
1882—Kleberg, Rudolph .....	Austin
1903—Kleiber, John I. ....	Brownsville
1894—Knight, R. E. L. ....	Dallas
1905—Kone, J. S. ....	Denison
1914—Krahl, Kenneth .....	Houston
1904—Kreuger, C. G. ....	Bellville
1915—Lane, C. E. ....	Galveston
1914—Laney, C. O. ....	Dallas
1910—Lanham, Fritz G. ....	Fort Worth
1908—Lassiter, N. H. ....	Fort Worth
1918—Latham, Homer B. ....	Montague
1914—Lawther, H. P. ....	Dallas
1906—Leary, D. T. ....	Texarkana
1908—Ledgerwood, H. O. ....	Fort Worth
1910—Lee, Brown F. ....	San Angelo
1894—Lee, Chas. K. ....	Fort Worth
1899—Lee, Tom J. ....	San Antonio
1904—Lenert, Geo. E. ....	LaGrange
1903—Leonard, H. B. ....	San Antonio
1916—Levy, Marion J. ....	Galveston
1906—Levy, R. B. ....	Texarkana
1911—Lewelleyn, Nat J. ....	Waco
1895—Lewis, Perry J. ....	San Antonio
1912—Lewis, Richard R. ....	Bay City
1914—Lewis, S. C. ....	Dallas
1917—Lewis, Thos. B. ....	Houston
1906—Lightfoot, J. P. ....	Austin
1911—Lindsey, S. A. ....	Tyler

1897—Lipscomb, A. D.....	Beaumont
1912—Lipscomb, A. G.....	Hempstead
1911—Lipscomb, R. T.....	Bonham
1907—Little, Jno. L.....	Kountze
1902—Lively, H. F.....	Dallas
1914—Lively, M. T.....	Dallas
1916—Livingston, H. L.....	Galveston
1914—Lobit, Louis .....	Galveston
1908—Locke, Eugene P.....	Dallas
1902—Locke, Maurice E.....	Dallas
1904—Lockett, J. W.....	Houston
1907—Lockett, J. S., Jr.....	Fort Worth
1896—Lockhart, Wm. B.....	Galveston
1908—Lomax, Page T.....	Fort Worth
1907—Long, S. B. M.....	Paris
1907—Lord, C. A.....	Beaumont
1913—Lotto, F. ....	San Diego
1904—Louis, B. F.....	Houston
1902—Love, Thomas B.....	Washington, D. C.
1913—Love, W. D.....	Uvalde
1899—Lovett, R. S.....	New York
1916—Lowrey, F. V.....	Hillsboro
1907—Lowry, M. W.....	Beaumont
1915—McAskill, D. A.....	San Antonio
1909—McCartney, C. L.....	Brownwood
1911—McClellan, J. J.....	Corsicana
1906—McClendon, J. W.....	Austin
1918—McConnell, H. G.....	Haskell
1891—McCormick, A. P.....	Dallas
1914—McCormick, C. T.....	Dallas
1915—McCracken, Oscar .....	San Antonio
1911—McCullough, T. L.....	Waco
1914—McCutcheon, Currie .....	Dallas
1916—McDonald, C. C.....	Sweetwater
1901—McDonald, D. D.....	Galveston
1913—McDonald, H. D.....	Corpus Christi
1907—McDowell, E. A.....	Beaumont
1897—McEachin, J. S.....	Richmond
1918—McFarland, C. M.....	Wichita Falls
1915—McFarland, Guy S.....	San Antonio
1905—McGrady, J. G.....	El Paso
1917—McGregor, T. H.....	Austin
1905—McInnis, V. E.....	Sherman
1912—McKamy, W. C.....	Dallas
1914—McKean, Lonnie .....	Austin
1908—McKenzie, J. F.....	El Paso
1891—McKie, W. J.....	Corsicana

1908—McKnight, A. H.	Dallas
1907—McLaurin, J. F.	Brookland
1900—McLaurin, Lauch	Austin
1908—McLean, E. C.	Sherman
1913—McLean, J. H.	Llano
1886—McLean, W. P.	Fort Worth
1908—McLean, W. P., Jr.	Fort Worth
1910—McMahan, B. M.	Greenville
1912—McMeans, S. A.	Houston
1910—McMillan, R. J.	San Antonio
1902—McRae, Chas. C.	Houston
1912—Macgill, Chas. P.	Galveston
1907—Mackey, Jno. W.	San Antonio
1906—Mahaffey, J. Q.	Texarkana
1904—Malevinsky, M. L.	New York
1915—Malone, Ralph	Dallas
1911—Mann, E. M.	Mart
1918—Marrrs, Jno. P.	Quanah
1916—Marshall, C. F.	Graham
1918—Martin, Bernard	Wichita Falls
1914—Martin, I. L.	Uvalde
1916—Martin, P. A.	Wichita Falls
1882—Masterson, B. F.	Galveston
1904—Masterson, A. E.	Angleton
1904—Masterson, Harris	Houston
1917—Masterson, Wm. H.	Houston
1908—Mathis, Jno. M.	Brenham
1918—Mathis, Ralph P.	Wichita Falls
1915—Matlock, A. L.	San Antonio
1908—Matthaei, W. A.	Bellville
1915—Mauermann, Gus B.	San Antonio
1903—Maury, R. G.	Houston
1914—Maxey, Rice	Sherman
1882—Maxey, T. S.	Austin
1911—Maxwell, F. M.	Waco
1905—Mayfield, Allison	Austin
1915—Mays, Livingston M.	Dallas
1910—Mays, Milton	San Angelo
1916—Mays, Richard	Corsicana
1907—Meador, R. T.	Dallas
1914—Meeks, E. R.	Dallas
1908—Michaelson, J. E.	Lawton, Okla.
1908—Milam, R. F.	Fort Worth
1916—Milheiser, Clarence	Galveston
1910—Miller, J. A. B.	Coleman
1897—Miller, Geo. E.	Fort Worth
1914—Miller, Geo. E., Jr.	Fort Worth



1917—Miller, Walter G.	Dallas
1912—Mills, Ballinger	Galveston
1882—Minor, F. D.	Beaumont
1916—Minton, R. E.	Groveton
1914—Mitchell, Geo. W.	Fort Worth
1912—Monteith, W. E.	Houston
1918—Montgomery, J. T.	Wichita Falls
1910—Montgomery, L. L.	Dallas
1896—Moody, L. B.	Houston
1907—Moore, B. E.	Beaumont
1916—Moore, W. W.	Houston
1902—Moroney, W. J.	Dallas
1915—Morris, G. C.	Devine
1916—Morris, N. B.	Palestine
1899—Morrison, W. A.	Cameron
1913—Morrison, Wm. G. B.	San Benito
1911—Morrow, Tarlton	Hillsboro
1899—Morrow, W. C.	Austin
1915—Morrow, Wright F.	Wichita Falls
1913—Morrow, William C., Jr.	Hillsboro
1899—Moseley, A. G.	St. Louis, Mo.
1910—Moseley, H. L.	Weatherford
1918—Moses, Dayton	Fort Worth
1918—Moss, A. S.	Memphis
1912—Moss, E. H.	LaGrange
1915—Moursund, A. N.	San Antonio
1911—Munroe, Richard I.	Waco
1914—Murphy, J. F.	Dallas
1910—Murray, Joe	San Antonio
1914—Muse, Cavin	Dallas
1902—Muse, J. C.	Dallas
1915—Myers, H. I.	Palestine
1916—Nagle, M.	El Paso
1907—Nall, E. L.	Beaumont
1913—Naman, W. W.	Waco
1918—Napier, E. W.	Wichita Falls
1906—Napier, W. P.	San Antonio
1903—Neethe, Jno.	Galveston
1910—Neill, Jas. J.	San Angelo
1903—Neill, Robt. T.	El Paso
1899—Nelms, Hayne	Groveton
1918—Nelson, Walter	Wichita Falls
1891—Newman, F. M.	Brady
1908—Newsom, Jno. A.	Buffalo
1895—Nichols, J. F.	Greenville
1904—Niday, Jas. E.	Houston
1908—Noland, Jas. E.	Fort Worth

1914—Nold, Walter N.	Dallas
1898—Norton, J. R.	San Antonio
1894—Nunn, D. A., Jr.	Crockett
1918—Nutt, Horace	Wichita Falls
1915—Oatman, Wilburn	Llano
1916—O'Dell, Henry	Galveston
1911—Odell, W. M.	Cleburne
1918—Ogle, J. R.	Wichita Falls
1918—O'Neal, Ben G.	Wichita Falls
1906—O'Neal, Howard F.	Atlanta
1908—Paddock, W. B.	Fort Worth
1886—Padelford, S. C.	Cleburne
1905—Park, A. P.	Paris
1898—Parker, Edwin B.	Houston
1896—Parker, John W.	Houston
1907—Parker, O. S.	Houston
1915—Parker, A. J.	San Antonio
1899—Parr, J. K.	Hillsboro
1911—Parrish, Lucian W.	Henrietta
1902—Patteson, James	Cooper
1908—Pearman, C. R.	Gainesville
1897—Peareson, D. R.	Richmond
1903—Pearson, J. M.	McKinney
1909—Pedigo, E. R.	Austin
1898—Peeler, Jno. L.	Austin
1904—Pendarvis, G. H.	Houston
1914—Penland, C. H.	Waco
1914—Pennington, R. E.	Brenham
1886—Perkins, E. B.	Dallas
1907—Perkins, J. L.	Rusk
1904—Phelps, Ed. S.	Houston
1902—Phillips, Nelson	Austin
1907—Pickett, E. B., Jr.	Liberty
1913—Picton, David M., Jr.	Corpus Christi
1904—Pierson, Wm.	Greenville
1908—Pierson, W. M.	Dallas
1900—Pleasants, R. A.	Galveston
1906—Pollard, Claude	Houston
1916—Pollard, Mason	El Paso
1914—Pope, Alex	Dallas
1913—Pope, John A.	Laredo
1913—Pope, W. E.	Corpus Christi
1918—Pope, W. S.	Anson
1902—Potter, C. C.	Gainesville
1914—Potter, Hugh M.	Houston
1909—Potts, C. S.	Austin
1906—Powell, Ben H.	Huntsville

1908—Prewitt, W. C.	Fort Worth
1916—Price, W. E.	Houston
1891—Proctor, F. C.	Houston
1914—Puckett, A. M.	Dallas
1882—Rainey, Anson	Dallas
1915—Ramer, Mrs. Florence R.	San Antonio
1910—Ramsey, W. F.	Dallas
1905—Randell, C. B.	Sherman
1908—Rhome, R. J.	Fort Worth
1910—Rice, Robt. H.	Winters
1910—Robarts, Chas. M.	Kingsville
1913—Roberts, Frank G.	Lockhart
1911—Roberts, J. C.	Dallas
1906—Robertson, Jno. C.	Dallas
1907—Robertson, H. G.	Dallas
1896—Robertson, Jas. M.	Meridian
1915—Robertson, Perry S.	San Antonio
1914—Robertson, Wm. F.	Dallas
1904—Robinson, C. W.	Houston
1906—Robinson, S. I.	Naples
1906—Rodgers, R. W.	Texarkana
1908—Ross, Thos. D.	Fort Worth
1908—Ross, Shapley P.	Waco
1910—Rowe, S. C.	Menardville
1904—Rowe, T. C.	Houston
1908—Rowland, R. M.	Fort Worth
1912—Royston, Mart H.	Galveston
1909—Rector, J. Bouldin	Austin
1882—Rector, N. A.	Austin
1916—Runge, Julius H.	Dallas
1903—Ryan, Jos.	San Antonio
1916—Ryburn, F. M.	Amarillo
1910—Sanders, J. M.	Center
1911—Saner, Jno. C.	Dallas
1900—Saner, R. E. L.	Dallas
1908—Sanford, A. D.	Waco
1913—Savage, Russell	Corpus Christi
1908—Sawyer, W. R.	Fort Worth
1882—Sayers, Jos. D.	Austin
1910—Sayles, John	Abilene
1913—Schlesinger, W. L.	San Antonio
1913—Scott, Edward Preston	Corpus Christi
1914—Scott, Ross M.	Dallas
1910—Scott, S. W.	San Antonio
1908—Scott, W. B.	Fort Worth
1904—Scott, Walter H.	El Paso
1907—Scurlock, Marvin	Beaumont

1918—Scurry, Edgar .....	Wichita Falls
1912—Searcy, Seth S.....	San Antonio
1882—Searcy, W. W.....	Brenham
1914—Seay, H. B.....	Dallas
1914—Seay, Walter F.....	Dallas
1903—Seeligson, A. W.....	San Antonio
1898—Sehorn, John .....	San Antonio
1906—Sexton, R. A.....	Marshall
1911—Sharp, John H.....	Ennis
1909—Shelley, G. E.....	Austin
1914—Shepard, Seth .....	Dallas
1899—Shephard, Jas. L., Sr.....	Colorado
1917—Shepherd, J. L., Jr.....	Colorado
1905—Shropshire, J. E.....	Brady
1910—Silliman, W. B.....	Eldorado
1882—Simkins, W. S.....	Austin
1915—Simmang, Theodore E.....	San Antonio
1900—Simmons, D. E.....	Houston
1908—Simon, U. M.....	Fort Worth
1914—Simpson, Cecil L.....	Dallas
1907—Skinner, S. P.....	San Antonio
1909—Shurtleff, V. L.....	Waco
1915—Slater, J. W., Jr.....	Houston
1908—Slay, W. H.....	Fort Worth
1911—Sleeper, W. M.....	Waco
1906—Smelser, S. H.....	Texarkana
1910—Smith, M. C.....	Ballinger
1910—Smith, Royall G.....	Colorado
1902—Smith, W. J. J.....	Dallas
1905—Smith, Cecil H.....	Sherman
1917—Smith, C. N.....	Liberty
1915—Smith, Edw.....	San Antonio
1917—Smith, N. J.....	Hillsboro
1907—Smith, Stuart R.....	Beaumont
1907—Smithdeal, C. M.....	Dallas
1914—Snodgrass, D. L.....	Coleman
1908—Snodgrass, F. L.....	Coleman
1905—Sonfield, Leon .....	Austin
1905—Spearman, R. F.....	Greenville
1913—Spears, Sam .....	San Benito
1904—Speer, Ocie .....	Fort Worth
1909—Spell, W. E.....	Waco
1895—Spence, Jos., Jr.....	San Angelo
1886—Spence, Wendell .....	Dallas
1906—Spivey, E. Newt.....	Atlanta
1906—Spivey, Jno. W.....	Marlin

1905—Spoonts, Marshall .....	Fort Worth
1914—Stallings, Leslie C. ....	Forney
1914—Starling, C. W. ....	Dallas
1913—Stayton, Robt. W. ....	Corpus Christi
1909—Stephens, I. W. ....	Fort Worth
1894—Stewart, Maco .....	Galveston
1896—Stewart, Jno. S. ....	Houston
1906—Stinchcomb, T. B. ....	Longview
1910—Stone, B. B. ....	Fort Worth
1912—Stone, Hugh L., Jr. ....	Houston
1918—Stoneham, Hal B. ....	Navasota
1911—Stratton, S. E. ....	Waco
1882—Street, R. G. ....	Galveston
1897—Streetman, Sam .....	Houston
1911—Stribbling, O. L. ....	Waco
1908—Stuart, Harry L. ....	Oklahoma City, Okla.
1900—Stubbs, Chas. J. ....	Galveston
1916—Stubbs, F. Spencer .....	Galveston
1882—Stubbs, Jas. B. ....	Galveston
1914—Sturgeon, B. B. ....	Paris
1914—Styles, S. J. ....	Wharton
1905—Suggs, J. T. ....	Denison
1915—Surkamp, Arthur .....	San Antonio
1913—Sutherland, Hugh R. ....	Corpus Christi
1910—Swafford, Whitten .....	Anson
1906—Talbot, J. M. ....	Dallas
1882—Taliaferro, Sinclair .....	Houston
1909—Tallichet, J. H. ....	Houston
1882—Tarlton, B. D. ....	Austin
1907—Taub, Otto .....	Houston
1911—Taylor, J. W. ....	Waco
1910—Taylor, S. E. ....	San Angelo
1915—Taylor, S. G. ....	San Antonio
1915—Taylor, Walton D. ....	Waco
1915—Teagarden, B. W. ....	San Antonio
1907—Teagle, C. A. ....	Houston
1907—Templeton, Howard .....	San Antonio
1914—Templeton, M. B. ....	Dallas
1918—Terrell, Ben M. ....	Fort Worth
1916—Terrell, Dick O. ....	San Antonio
1906—Terrell, J. M. ....	Daingerfield
1911—Terrell, John L. ....	Dallas
1882—Terrell, J. O. ....	San Antonio
1915—Terrell, M. W. ....	San Antonio
1915—Terrell, Robt. W. B. ....	San Antonio
1882—Terry, J. W. ....	Galveston
1910—Thomas, J. A. ....	San Angelo

1906—Thomas, W. S.....	Texarkana
1909—Thomason, R. E.....	El Paso
1916—Thompson, Paul G.....	Greenville
1905—Thompson, Geo. ....	Fort Worth
1897—Thompson, Wm. ....	Dallas
1914—Thompson, Will C.....	Dallas
1910—Thomson, J. T.....	San Angelo
1914—Threadgill, Wilmer .....	Laredo
1913—Tison, Walter F.....	Corpus Christi
1882—Todd, Chas. S.....	Texarkana
1907—Todd, Oliver J.....	Beaumont
1915—Townes, John C., Jr.....	Houston
1896—Townes, John C.....	Austin
1914—Townsend, J. N.....	Dallas
1908—Townsend, M. W.....	Dallas
1909—Treacchar, Chas. J.....	Galveston
1916—Treacchar, H. H.....	Galveston
1915—Trueheart, C. W.....	San Antonio
1915—Turner, John W.....	San Antonio
1913—Turner, D. McNeil.....	Corpus Christi
1905—Turner, P. A.....	Texarkana
1898—Turney, W. W.....	El Paso
1914—Tyler, Wallace .....	Houston
1909—Umstead, Chas. H.....	DeLand, Florida
1905—Upthegrove, Daniel .....	St. Louis, Mo.
1910—Upton, Lee .....	San Angelo
1914—Utay, Joe .....	Dallas
1908—Vaughan, R. M.....	Hillsboro
1905—Vinson, Wm. A.....	Houston
1908—Von Carlowitz, C.....	Fort Worth
1909—Von Rosenberg, Fred C.....	Austin
1910—Wade, J. B.....	Ballinger
1908—Wade, N. J.....	Fort Worth
1906—Wagstaff, J. M.....	Abilene
1882—Walker, Jno. C.....	Galveston
1914—Walker, N. C.....	San Saba
1910—Wallace, Geo. E.....	El Paso
1909—Walne, Walter H.....	Houston
1907—Walter, C. K.....	Gonzales
1917—Ward, Mrs. Hortense.....	Houston
1911—Ward, Pierce B.....	Cleburne
1903—Ward, R. H.....	San Antonio
1917—Ward, W. H.....	Houston
1910—Wardlow, S. J.....	Sonora
1913—Ware, Sam D.....	Belton
1896—Wash, F. H.....	San Antonio
1914—Watkins, Royall R.....	Dallas

1902—Watkins, A. B.	Athens
1895—Watkins, Edgar	Atlanta, Ga.
1911—Watson, John	Cameron
1910—Wayman, James W.	Galveston
1889—Wear, W. C.	Hillsboro
1910—Weatherred, W. Marcus	Coleman
1911—Weaver, W. G.	Waco
1914—Webb, C. W.	Elgin
1905—Webb, G. P.	Sherman
1912—Weisberg, Alex. F.	Dallas
1914—Wencker, O. F.	Dallas
1911—West, Frank T.	Waco
1910—West, Thomas F.	Fort Worth
1914—Westerfield, Claud C.	Dallas
1918—Weldon, H. F.	Wichita Falls
1918—Weeks, Harry C.	Wichita Falls
1918—Weeks, W. F.	Wichita Falls
1910—Wharton, C. R.	Houston
1911—Wharton, Earl	Houston
1907—Wheat, D. P.	Beaumont
1915—Wheeler, C. A.	Texarkana
1916—Wheeler, John D.	Aransas Pass
1906—Wheeler, John T.	Galveston
1907—Whitaker, H. M.	Beaumont
1916—Whitfield, Thos. J.	Gainesville
1915—Wicks, Ed. H.	San Antonio
1908—Wilcox, F.	McKinney
1894—Wilkinson, A. E.	Austin
1916—Williams, Bryan F.	Galveston
1894—Williams, Charles S.	Caldwell
1894—Williams, F. A.	Galveston
1907—Williams, Joseph	Port Arthur
1914—Williams, T. B.	Dallas
1911—Williamson, J. D.	Waco
1911—Willis, J. D.	Waco
1914—Willis, J. Hart	Dallas
1916—Wilson, Fred T.	Houston
1897—Wilson, William H.	Houston
1915—Wine, Russell B.	San Antonio
1909—Winslow, A.	Laredo
1916—Wolters, J. F.	Houston
1906—Wood, Houston	Dallas
1898—Wood, J. H.	Sherman
1915—Woodhull, Frost	San Antonio
1911—Woods, J. W.	Houston
1908—Woods, J. H.	Corsicana
1913—Woods, S. H.	San Diego

1909—Woodward, D. K., Jr.	Austin
1914—Woodward, Garland	Coleman
1910—Woodward, J. O.	Coleman
1911—Woodward, N. P.	Temple
1910—Woodward, Walter C.	Coleman
1911—Worsham, Joe A.	Dallas
1915—Worth, Fred	San Antonio
1904—Wren, Clark C.	Houston
1916—Wren, F. J.	Fort Worth
1911—Wren, J. G.	Waco
1914—Wright, George S.	Dallas
1909—Wright, W. A.	San Angelo
1908—Wynne, Ike A.	Fort Worth
1910—Yantis, A. B.	Sweetwater
1916—York, O. S.	Galveston
1916—Young, Eldon	San Antonio
1897—Young, John L.	Dallas
1916—Young, Ross	Longview

#### Honorary Members.

Biggs, Albert W.	Memphis, Tenn.
Brown, Rome G.	Minneapolis, Minn.
Clark, Jeremiah	
Coates, Lieutenant Oscar	Tennessee
Fitts, William C.	Mobile, Ala.
Howe, William Wirt	New Orleans, La.
Littleton, Martin W.	New York City
Peck, George R.	Chicago, Ill.
Pound Roscoe	Cambridge, Mass.
Rose, G. B.	Little Rock, Ark.
Spencer, Selden P.	St. Louis, Mo.
Taylor, Hannis	Washington, D. C.



## DECEASED MEMBERS

---

Abbott, Jo, Hillsboro.....	Died Feb. 11, 1908.
Adams, Z. T., Kaufman.....	Died Jan. 9, 1886.
Anderson, James M., Waco.....	Died June 3, 1889.
Andrews, A. W., Terrell.....	Died Feb. 5, 1887.
Archer, Osceola, Austin.....	Died April, 1898.
Armistead, George J., Texarkana.....	Died May 1, 1908.
Atlee, E. A., Laredo.....	Died Jan. 5, 1910.
Austin, William J., Denton.....	Died Sept. 7, 1888.
Baker, James A., Sr., Houston.....	Died Feb. 23, 1897.
Baker, Waller S., Waco.....	
Baldwin, B. J., Paris.....	Died May 19, 1914.
Ball, F. W., Fort Worth.....	Died Sept. 9, 1900.
Ballinger, T. J., Galveston.....	Died Oct. 27, 1889.
Ballinger, D. C., San Antonio.....	Died Sept. 1, 1910.
Ballinger, W. P., Galveston.....	Died Jan. 28, 1888.
Banks, W. S., Temple.....	Died Jan. 19, 1911.
Bartholomew, W. T., Fort Worth.....	
Bassett, B. H., Dallas.....	Died July 15, 1893.
Bell, C. K., Fort Worth.....	
Bell, Geo. A., Mexia.....	
Biggs, Albert W., Memphis, Tenn.....	
Blake, S. R., Bellville.....	Died Nov., 1908.
Bledsoe, D. T., Cleburne.....	Died August, 1893.
Bonner, M. H., Tyler.....	Died Nov. 25, 1883.
Bookhout, John, Dallas.....	
Botts, W. B., Houston.....	Died March 7, 1894.
Bradley, L. D., Fairfield.....	Died Oct. 6, 1886.
Bradshaw, C. J., LaGrange.....	Died June 13, 1888.
Brewer, David J., Washington.....	Died March 28, 1910.
Brown, R. L., Austin.....	Died Nov. 9, 1910.
Brown, T. J., Austin.....	Died May 26, 1915.
Bryan, Beauregard, El Paso.....	
Bryant, J. D., Richmond.....	Died Aug. 16, 1904.
Burges, W. H., Seguin.....	Died June 24, 1898.
Burns, Coke K., Houston.....	
Burns, W. T., Houston.....	Died Nov. 17, 1917.
Burts, J. H., Austin.....	Died Jan. 15, 1894.
Carrington, W. A., Houston.....	Died July 14, 1892.
Chesley, A., Beeville.....	Died July 17, 1807.
Cleveland, C. L., Galveston.....	Died February, 1892.
Cochran, T. B., Austin.....	
Cooper, M. S., Conroe.....	Died March 30, 1899.
Cooper, S. B., Sr., New York.....	Died August, 1918.

Craddock, John T., Greenville.....	Died March 21, 1911.
Crain, W. H., Cuero.....	Died Feb. 10, 1896.
Crawford, M. L., Dallas.....	Died May 15, 1910.
Croom, J. L., Jr., Wharton.....	Died Aug. 2, 1890.
Dashiel, A. H., Terrell.....	Died June 30, 1917.
Davis, A. L., Houston.....	
Davis, George W.....	Died Sept. 28, 1898.
Davis, L. B., Cleburne.....	Died Aug. 31, 1910.
Denman, L. G., San Antonio.....	Died Sept. 14, 1916.
Devine, Thomas J., San Antonio.....	Died March 16, 1890.
Dodd, Thomas W., Laredo.....	Died Jan. 13, 1907.
Duncan, Jno. M., Houston.....	
Eberhart, F. S., Mineral Wells.....	
English, S. P., Dallas.....	Died January 15, 1919.
Evans, W. A., Bonham.....	Died August 16, 1916.
Finley, N. W., Dallas.....	Died Sept. 23, 1910.
Fisher, Sam R., Austin.....	Died Feb. 12, 1911.
Ford, Thomas C.....	Died October 26, 1915.
Gaines, R. R., Austin.....	Died Oct. 13, 1914.
Garrett, C. C., Brenham.....	Died Sept. 15, 1905.
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Giles, W. M., Mineola.....	Died May 27, 1901.
Givens, J. S., Corpus Christi.....	Died Jan. 20, 1887.
Goldthwaite, George, Houston.....	Died April 23, 1897.
Gosling, H. L., Castroville.....	Died Feb. 21, 1885.
Gould, Robert S., Austin.....	Died June 30, 1904.
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Green, John A., Sr., San Antonio.....	Died July 8, 1899.
Greene, S. P., Fort Worth.....	Died June 30, 1904.
Gresham, Walter, Jr., Galveston.....	Died Jan. 15, 1905.
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Harwood, Thomas M., Gonzales.....	Died Jan. 29, 1900.
Henderson, John N., Bryan.....	Died Dec. 21, 1907.
Henry, John L., Dallas.....	Died Oct. 21, 1907.
Herring, M. D., Waco.....	Died Nov. 27, 1897.
Hill, George L., Gainesville.....	Died July 25, 1887.
Hill, R. J., Austin.....	Died March 30, 1889.
Hill, T. J., Smithville.....	Died March 19, 1918.
Holmes, H. M., Mason.....	Died Aug. 17, 1895.
Houston, A. W., San Antonio.....	
Hunter, Ray, Fort Worth.....	Died Sept. 25, 1916.
Hurley, J. A., Texarkana.....	

Hurt, J. M., Dallas.....	Died April 19, 1903.
Hutchings, R. M., Galveston.....	Died Aug. 22, 1895.
Jackson, A. M., Sr. Austin.....	Died July 11, 1889.
Jackson, A. M., Jr., Austin.....	Died Aug. 17, 1894.
John, A. S., Beaumont.....	Died Feb. 5, 1889.
Johnson, Byron, Galveston.....	Died March 2, 1900.
Jones, C. Anson, Houston.....	Died Jan. 10, 1888.
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Kennard, John R., Anderson.....	Died Oct. 24, 1884.
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Kirk, La Fayette, Brenham.....	Died July 29, 1893.
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West, Charles S., Austin.....	Died Oct. 23, 1885.
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